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No. 91-610

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

LOCAL 144 NURSING HOME PENSION FUND, *et al.*,
Petitioners,
v.
NICHOLAS DEMISAY, *et al.*,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

**MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE
AND BRIEF AMICI CURIAE OF CENTRAL STATES,
SOUTHEAST AND SOUTHWEST AREAS HEALTH AND
WELFARE AND PENSION FUNDS
IN SUPPORT OF PETITIONERS**

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**MOTION OF CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS HEALTH AND WELFARE AND
PENSION FUNDS FOR LEAVE TO FILE BRIEF
AMICI CURIAE IN SUPPORT OF PETITIONERS**

Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund move the Court for leave to file the attached brief as *amicus curiae* in support of Petitioners Local 144 Nursing Home Pension Fund, et al. Central States urges that the United States Court of Appeals for the Second Circuit be reversed. The reasons for this motion are as follows:

1. Central States Pension Fund is the largest multi-employer defined benefit pension plan in the country. The Pension Fund covers approximately 400,000 active participants and retirees. The Health and Welfare Fund cov-

ers approximately 150,000 active participants and retirees.

2. Central States is governed by the Employee Retirement Income Security Act of 1974, as amended. Sections 4231 through 4235 of ERISA provides the exclusive means for a pension plan like Central States to transfer assets and liabilities to another plan.

3. Trust agreements of both Central States Funds bar employers from any claim on trust assets, including transferring assets to another plan.

4. If the decision of the court of appeals were applied to Central States, it would be obligated to transfer assets to a new plan at the discretion of an employer that withdraws from Central States. Such a transfer would violate the trust agreements and ERISA.

5. Transfers of assets are actuarially unsound and could lead to the insolvency or termination of the Central States Funds and hundreds of similarly situated multi-employer pension plans.

6. Petitioners consent to the filing of this brief. Respondents refuses to consent.

Respectfully submitted,

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
The Central States Pension Fund	2
The Central States Health and Welfare Fund	3
INTERESTS OF CENTRAL STATES	4
The Pension Fund	4
The Health and Welfare Fund	5
SUMMARY OF ARGUMENT	6
ARGUMENT	9
I. THE DECISION BELOW ENCOURAGES AD- VERSE SELECTION AGAINST THE ACTU- ARIAL PREMISES UPON WHICH PLANS LIKE CENTRAL STATES ARE BASED, THUS DEFEATING THE INSURANCE PRIN- CIPLE AND HASTENING THEIR DEMISE	9
II. NEITHER THE LMRA NOR ERISA SUPPORT THE DECISION BELOW, WHICH UNDER- CUTS THE POLICIES OF BOTH STATUTES	14
CONCLUSION	16

TABLE OF AUTHORITIES

CASES

Page

<i>Central States, Southeast and Southwest Areas Pension Fund v. Gerber Truck Service</i> , 870 F.2d 1148 (7th Cir. 1989)	9, 13
<i>Central States, Southeast and Southwest Areas Pension Fund v. Independent Fruit and Produce Co.</i> , 919 F.2d 1343 (8th Cir. 1990)	9
<i>Phillips v. Alaska Hotel and Restaurant Employees Pension Fund</i> , 944 F.2d 509 (9th Cir. 1991)	9, 15

STATUTES

Employee Retirement Income Security Act of 1974, as amended	<i>passim</i>
Section 302(c)(5), Labor Management Relations Act	<i>passim</i>
29 U.S.C. § 1058	15
29 U.S.C. § 1060(a)	14
29 U.S.C. § 1381	13
29 U.S.C. § 1391(c)(2)	13
29 U.S.C. § 1411	15
29 U.S.C. § 1415	13, 15

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INTRODUCTION

The Central States, Southeast and Southwest Areas Pension Fund previously moved this Court for leave to file a brief *amicus curiae* in support of the petition for a writ of certiorari. This Court granted leave to file the brief *amicus curiae* by order of June 22, 1992. The Central States Pension Fund and its sibling the Central States, Southeast and Southwest Areas Health and Welfare Fund submit the following brief on the merits in

support of petitioners, Local 144 Nursing Home Pension Fund, *et al.*¹ Central States urges reversal of the decision below.

The Central States Pension Fund

Central States Pension Fund is a multiemployer defined benefit pension trust fund established in 1955 by the Central Conference of Teamsters and the Southern Conference of Teamsters (affiliates of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America) and by various employer associations pursuant to section 302(c)(5) of the Labor Management Relations Act (LMRA). The Pension Fund is governed by a Board of Trustees consisting of an equal number of union and management appointees (four of each). The Pension Fund is administered for the exclusive benefit of the participants to whom the Trustees owe an undivided duty of loyalty. The purpose of the Pension Fund is to pay retirement and certain other benefits to participants and their beneficiaries who become eligible under the terms of the Central States pension plan (the "Plan").

The Central States Pension Fund is the largest multi-employer pension plan in the country. Its current assets exceed \$11.4 billion and the present value of its liabilities for vested benefits is approximately \$13 billion. Under the Plan and Trust Agreement participating employers contribute to the Pension Fund pursuant to their collective bargaining agreements for work performed by their covered (bargaining unit) employees. Employees earn credit (accrued benefits) for covered work periods and after earning 10 years of credit, become vested in the benefits. In order for an employer and its union employees to participate in Central States, their collective

¹ The two funds are jointly administered under the direction of the same 8-member board of trustees. The funds will hereafter be referred to collectively as Central States or individually as the Pension Fund and the Health and Welfare Fund.

bargaining agreement, including the contribution rates, must conform to the Trust Agreement and the Plan. The Pension Fund covers 164,000 retirees presently drawing benefits and 238,000 active participants of approximately 5,000 contributing employers. If an employer's obligation to contribute ceases, then coverage ceases for employees of the employer. Neither employees nor retirees of the employer, however, lose their vested benefits under the Plan; and employees may continue to earn additional benefits by going to work for another contributing employer.

The Central States Health and Welfare Fund

The Central States Health and Welfare Fund was established in 1950 by an Agreement and Declaration of Trust ("Trust Agreement"). The Trust Agreement, as amended, provides for the payment of health and welfare benefits to eligible employees of contributing employers that are signatory to collective bargaining agreements with local unions affiliated with the Central Conference of Teamsters and the Southern Conference of Teamsters.

The Health and Welfare Fund has net assets of more than \$100 million and provides benefits to more than 122,000 active participants, as well as 22,000 retirees and their families. The Health and Welfare Fund paid nearly \$572 million in benefits during 1990 alone.

As with the Pension Fund, employers make contributions to the Health and Welfare Fund on behalf of employee participants at the rate specified in the applicable collective bargaining agreement. Participation is based on covered service as defined by the collective bargaining agreement. The Trustees of the Health and Welfare Fund are empowered to establish and amend the level of plan benefits.

INTERESTS OF CENTRAL STATES

The Pension Fund

The Trust Agreement of the Central States, Southeast and Southwest Areas Pension Fund (Dec. 31, 1991)² provides as follows:

ARTICLE XV BENEFICIAL RIGHTS

No Employer or Union, or Employees, shall have any right, title or interest in or to the Trust Fund or any part thereof other than vesting under the Pension Plan except in accordance with applicable law. There shall be no pro rata or other distribution of any of the assets of the Fund as a result of any Union Employer or group of Employees of Employers ceasing their participation in this Fund for any purpose or reason, except as required by law.

Further, Article III, Section 4 of the Trust provides:

The Trustees are authorized to receive all Employer Contributions and apply such contributions in the best interest of the Fund. Nothing herein shall give any Employer the right to designate how any contributions shall be applied.

Finally, Article XIV, Section 1, provides in part, "In no event shall Employers, directly or indirectly, participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund." And the pension plan established pursuant to Article VII of the Trust provides: "Employer Contributions shall be irrevocable, shall be held and invested according to the provisions of the Trust Agreement, and shall be used for providing benefits and paying the expenses of the Pension Fund."³

² The Trust Agreement is reproduced in Appendix A hereto at pp. 1a-36a. Central States believes the terms of its trust to be typical in substance of most qualified multiemployer pension plans.

³ Participating employers agree to be bound by these provisions through their collective bargaining agreements and through Par-

The decision of the court of appeals in this case may invalidate the provisions quoted above on the ground that they constitute a "structural defect" under § 302(c)(5) of the LMRA. Under the court's decision Central States may be required to transfer assets (but not liabilities) whenever an employer creates a new plan for the employer's employees.

If this Court does not reverse the court of appeals, then its decision will stand as an invitation to employers to break away from multiemployer defined benefit plans to take advantage of the economic benefits of a forced asset transfer. No multiemployer plan, even a financially strong plan like the Pension Fund, can long withstand the effects of adverse actuarial selection that the court of appeals decision permits (and thus encourages).

The Health and Welfare Fund

The provisions of Trust Agreement for Central States, Southeast and Southwest Areas Health and Welfare Fund⁴ are similar to those of the Pension Fund. Article VIII, Section 1 provides:

No Right, Title, or Interest of Employers and Union—No Employer or Union, or Employees, shall have the right, title or interest in or to the Trust Fund or any part thereof. There shall be no pro-rata or other distribution of any of the assets of the Fund as a result of any Union, Employer or Group of Employees of Employers ceasing their participation in this Fund for any purpose or reason, except as required by law.

Participation Agreements executed directly with Central States. A specimen Participation Agreement is reproduced in Appendix C hereto at pp. 70a-78a.

⁴ The Trust Agreement is reproduced in Appendix B hereto at pp. 37a-69a. Central States believes the terms of its trust to be typical in substance of most qualified multiemployer health and welfare plans.

Further, Article XI, Section 1 provides in part, "In no event shall the Employers, directly or indirectly, participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund." And finally, Article III, Section 4 provides in part, "Nothing herein shall give any Employer the right to designate how any contributions shall be applied."

Thus, as it would with the Pension Fund, the court of appeals decision may be read to invalidate each of these provisions as a "structural defect." The concerns, however, are even more immediate. Due to escalating health care costs and demand, the Health and Welfare Fund's current reserves provide approximately a 2-month cushion for benefit payments. The withdrawal by a substantial employer, or group of employers, with a significant portion of the reserves would immediately and negatively impact the financial solvency of the Health and Welfare Fund. Thus the survival of health and welfare funds like Central States may also depend on this Court's reversal of the court of appeals.

SUMMARY OF ARGUMENT

The United States Court of Appeals for the Second Circuit posed the following question in the case below:

[W]hether, when an employer leaves pension and welfare trust funds in favor of another set of trust funds, § 302(c)(5) of the Labor Management Relations Act ("LMRA") requires a reallocation of monies paid to the former funds on behalf of its employees, so that the monies are used "for the sole and exclusive benefit of the employees of such employer" as those terms are used in § 302(c)(5).

The court answered yes, that it was a structural defect under § 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5), for a multiemployer pension plan and a multiemployer health and welfare plan that were established pursuant to collective bargaining to re-

fuse to transfer assets attributable to contributions made on behalf of an employer's employees when the employer left the old plans and joined new plans. The court held that a portion of the assets of the old plans must be transferred involuntarily to the new plans upon demand of the employer. If the court of appeals is correct, then the financial integrity and solvency of all such trust funds is placed in immediate jeopardy. Forty years of settled expectations and reliance under the LMRA will have been undone. If allowed to stand, the court of appeals decision would allow employers to select adversely against the actuarial interests of Central States and other such plans. Indeed, it may be in the direct pecuniary interest of an employer to take advantage of this change of law to seize a portion of the pooled assets for their more direct benefit.

It would be difficult to overstate the impact of the decision below on multiemployer plans. These plans are pooled trusts pursuant to the requirements of the LMRA and the Employee Retirement Income Security Act of 1974 (ERISA) under which all the assets of the plan are available to satisfy any benefit under the plan. The court of appeals has in effect, however, empowered employers who contribute to such plans with the right to divert assets attributable to contributions on behalf of their specific employees to another plan without regard to the liabilities left behind in the old plan. This may not be a power that every employer will wish to use—at least initially. Only those employers that stand to gain economically will have the incentive to leave the old plan. This is a zero-sum game, however. If the employers who leave achieve an economic gain, then the old plan and the employers that remain behind are the losers. Because it is generally in the pecuniary interests of employers to make such choices, each withdrawal creates a growing deficit in the old plan and additional incentive for more withdrawals, escalating until plan failure and termination.

The court of appeals failed to grasp the underlying nature of these funds as insurance vehicles and that to survive they must follow insurance principles. It is axiomatic that in any defined benefit plan not every participant will receive a benefit under the plan. Only participants who meet the service and other requirements for benefits will receive them. Amounts contributed on behalf of those who do not earn benefits, fund, in part, the benefits of those who do. This translates into universally accepted actuarial funding assumptions under which employers pay less in contributions per participant. If the court of appeals were right, then the funding assumptions of all multiemployer defined benefit plans have been wrong since their inception.

The court of appeals, however, was wrong. There is no structural defect under § 302(c)(5) of the LMRA when a plan prohibits a transfer of assets because the LMRA expressly permits assets contributed by an employer to be used to satisfy benefits of the employees of any covered employer, not just the contributing employer. If there were any questions about the meaning of the words of that statute, then ERISA should have laid it to rest. ERISA comprehensively governs asset transfers between pension plans—a fact ignored by the court of appeals—and ERISA does not require (indeed would prohibit) a transfer like that mandated by the court below.

The decision below undercuts the foundations of multi-employer plans, thus subverting the policies of both the LMRA and ERISA and threatening the continuing existence of these plans. The court of appeals should be reversed.

ARGUMENT

I. THE DECISION BELOW ENCOURAGES ADVERSE SELECTION AGAINST THE ACTUARIAL PREMISES UPON WHICH PLANS LIKE CENTRAL STATES ARE BASED, THUS DEFEATING THE INSURANCE PRINCIPLE AND HASTENING THEIR DEMISE

The decision below strikes at the heart of Taft-Hartley trust funds. The overarching principle upon which they are based is that of risk pooling supported by the assets of a pooled trust. The trust fund contracts to pay specified benefits to covered participants (employees) and their beneficiaries. The employer contracts to make contributions at a set level. The contributions and the benefits are linked actuarially based on the characteristics of the plan as a whole. Thus, when an employer joins the plan, its contributions are based on established actuarial rates and not on the characteristics of its individual employees.

In this regard multiemployer trust funds operate very much like insurance companies. "Yet pension and welfare plans are insurance vehicles. Insurers depend on receiving contributions from persons who collect far in the future or not at all. *Central States, Southeast and Southwest Areas Pension Fund v. Gerber Truck Service, Inc.*, 870 F.2d 1148, 1154 (7th Cir. 1989); *Central States, Southeast and Southwest Areas Pension Fund v. Independent Fruit and Produce Co.*, 919 F.2d 1343, 1348, n.3 (8th Cir. 1990) *cert. denied*, 112 S.Ct. 59, 116 L.Ed.2d 35 (1991).⁵ Indeed insurance companies are their chief

⁵ The Ninth Circuit has grappled with the nature of these pension funds, concluding they are "neither pure deferred compensation nor pure incentive and reward" but rather both. *Phillips v. Alaska Hotel & Restaurant Employees Pension Fund*, 944 F.2d 509, 517 (9th Cir. 1991) *cert. denied*, 112 S.Ct. 1942, 118 L.Ed.2d 548 (1992). "The formula necessarily assumes that the pensions of a significant number of employees may never vest." *Id.* The court

competitors.⁶ The contributions made by an employer are equivalent to the premium the employer would otherwise pay to the insurance company for similar benefits. And, of course, as with all services based on insurance principles, there are economic winners and economic losers.⁷ Some participants will live longer and draw more benefits than others (perhaps even more than the contributions made on their behalf). Other participants may suffer catastrophic medical contingencies that are far more costly than the contributions made for them. But we do not know in advance who will be the "winners." This is simply risk sharing (insurance) in action.

It is beyond cavil that multiemployer trust funds are built around this principle and ERISA amply supports it. Indeed multiemployer funds differ from insurance companies in two ways that are significant here, and draw them even closer to pure insurance than a typical insurance company. First employees continue to earn service credit as long as they are employed by any of the 5000 contributing employers (or any new employer that chooses coverage). Tying the value of any one participant's benefits to one employer is practically impossible. Even if it could be done as of a date of transfer, later acts could retroactively change the value (*e.g.*, an employee in the new fund transferring back to the old fund).

Second, multiemployer funds are more likely to use universal ratings, which produce contribution rates

is right; that is the nature of this insurance. The decision below, by contrast, is perilously close to adopting (incorrectly) a pure deferred compensation view of these plans.

⁶ The Health and Welfare Fund is obviously just like a medical insurance company. The Pension Fund provides a service equivalent to a group annuity policy of a life insurance company.

⁷ Multiemployer plans would suffer no less chaos than the insurance industry would if premium payers were suddenly authorized to demand a refund of "unused" premiums to apply toward the purchase of their next policy.

largely independent of the employer's employees' actual characteristics. The participants are assumed to be homogeneous with the whole and contributions are level. The employers take advantage of this when they join the plan (before they know what their actual experience will be). Thus, the employers also are insured. Having gotten what they paid for in Petitioner's fund, employers like those now in Respondent's fund simply wish to be re-rated with perfect hindsight—to get more than they paid for.

The court of appeals, however, ignores the insurance nature of these funds. Another statute, the LMRA, overrides the insurance principle according to the court and requires the employees of each employer to be the direct beneficiary of that employer's contributions. In other words multiemployer trust funds that purport to apply insurance principles (all of them) are flawed from the start with a "structural defect," if that court is right.

Central States does not here claim that Congress could not, if it desired, require an employer's contributions to benefit only its own employees. Rather, Central States argues that Congress did not enact such a rule. Indeed such a rule, if implied by § 302(c)(5) would severely undercut that very provision. Section 302(c)(5) was designed to permit the creation of these trust funds. Ironically, the Second Circuit's interpretation of § 302(c)(5) would, if affirmed, destroy them.⁸

The court of appeals appeared to believe that its decisions was limited in scope, but it is not. It allows any group of employers to create (with the union) competing

⁸ At a minimum, Central States would have to adjust contribution rates to fit the characteristics of the employees of each employer individually, and in the case of the Health and Welfare Fund might have to limit benefits to the contributions received from the employer. But then it is not group insurance, but only a bank account. If it ceases to be insurance, employers would abandon the Funds in droves.

trust funds and demand that assets attributable to contributions of those employers be turned over to the new fund. But the court offers no reasoned basis why its decision would not apply equally to any individual employer, either by agreement with the union or without such an agreement (if the collective bargaining agreement had expired), who withdraws from a plan.

Further, the decision below encourages such withdrawals. Central States, like many such funds, already finds itself with a declining contribution base,⁹ which will only be aggravated. If the work force is not uniform within each employer, the employees transferred to the new plan may have favorable actuarial attributes from a funding standpoint that would enhance their value to the new plan and the loss to the old plan. This would be the case if the transferred employees were younger than those left in the old plan. Younger employees may not vest in their pension benefits thus creating benefit forfeitures that allow assets contributed on their behalf to be applied to other vested benefits thus reducing the need for current contributions. And even if some of the younger employees do vest, there is generally more time available before their retirement to fund their benefits—a factor that also reduces the need for current contributions.

This is adverse actuarial selection, which is anathema to the insurance principle.

Our pattern must be common: An employer wants some of its employees to have pension and health benefits, and others not. Some may be only a few years away from vesting. Pension and welfare trusts, like insurers generally, want to avoid 'adverse selection', the dropout of persons safer or younger than the pool's average. Funds insist that members of a group be in or out as a bloc: the fund cannot

⁹ Since 1980 Central States has lost 150,000 participants as thousands of employers have ceased contributing to the Pension Fund.

cover the old and infirm at a rate computed from group averages while receiving nothing on behalf of younger employees. Employers often strongly wish it were otherwise. Local unions may not care about selective inclusion in pension plans (since the costs are borne by employers in other parts of the country), and from their perspective having some workers covered is better than having none.

Central States v. Gerber Truck Service, 870 F.2d 1148, 1151-52 (7th Cir. 1989). That by itself is an incentive to withdraw that is only barely offset in pension plans by withdrawal liability. 29 U.S.C. § 1381 *et seq.* If the employers can demand assets of the plan, the withdrawal liability will be offset, making withdrawal more attractive, thus further undercutting the purposes of ERISA.¹⁰ Health and welfare plans have no withdrawal liability but there are similar incentives to withdraw.¹¹ A younger population tends to draw less on health benefits, but some reserves are necessary to pay current claims. If a new plan can demand a stake from the old plan, then the new plan can lower contributions (or raise benefits) because it is cheaper to maintain, while the old plan must replenish reserves (if it can) through higher contributions (or reduced benefits). Other employers in the old plan will be increasingly moved to withdraw as well until the old plan terminates.

Taken to its logical limit, the decision below would, at least, turn a multiemployer trust funds like Central States into simply aggregates of single-employer plans.

¹⁰ Withdrawal liability is the employer's share of unfunded vested benefits, calculated as of the end of the year preceding withdrawal. 29 U.S.C. §§ 1381, 1391(c)(2)(C)(I). To charge the employer for a share of the present value shortfall only to then refund a share of "reserves" would be absurd. In fact, ERISA allows offsets to withdrawal liability only to the extent vested liabilities in excess of assets are transferred to the new plan. 29 U.S.C. § 1415.

¹¹ Employees and their unions are also affected by these incentives to withdraw. Lower benefit costs may mean higher wages.

The fund would be responsible to each employer (and its employees) for the contributions made by each. Under the current structure, however, plan are obligated to pay benefits even if they exceed contributions. It is mathematically obvious that if plans must pay no less than that contributed but may be required to pay more, then outflow must exceed income. This disastrous instability could only be overcome by termination or restructuring into single-employer plans.

II. NEITHER THE LMRA NOR ERISA SUPPORT THE DECISION BELOW, WHICH UNDERCUTS THE POLICIES OF BOTH STATUTES

The consequences of the decision below are wholly unnecessary of course, because the court of appeals was wrong. The LMRA dictates no structural defect. In requiring that employer contributions inure solely to the benefit of employees of the employer the statute was using terms of art. Section 302(c)(5) expressly provides that contributions are to inure to "the sole and exclusive benefit of the employees of such employer . . . (jointly with the employees of other employers making similar payments . . .)." Under a multiemployer trust fund all participants are, in effect, deemed to be employees of each employer precisely to avoid the structural problem perceived by the court below.¹² There is no structural defect under § 302(c)(5) because all of the objectives of that statute are still met where the assets remain with the original trust to be used for trust purposes—benefits to employees.

Even if the LMRA were not so clear, ERISA is, and the court of appeals entirely failed to appreciate the relationship between the two statutes. The LMRA is the original authorizing statute for jointly trustee funds

¹² ERISA also provides that all participants be treated as if employed by a single employer. See *e.g.*, 29 U.S.C. § 1060(a)(1) (minimum vesting rules); § 1060(a)(3) (minimum funding rules).

like Central States. It is through ERISA, however, that Congress chose to regulate qualified funds; and ERISA does this comprehensively and completely when it comes to transfers of plan assets. Since ERISA is a statute and is not subordinate to the LMRA, it must follow that when a plan is qualified under ERISA in a particular respect, it accords with the LMRA in that same aspect. If there is an ambiguity in the LMRA (or in this case a court-created inconsistency), then ERISA, the implementing statute, governs. And even if there were a conflict between the statutes, ERISA, the newer statute, would express the more current view of Congress, constituting, then, a silent amendment to the LMRA.¹³ Here there is no question that Central States and petitioners are qualified plans under ERISA, and accord fully with ERISA in their refusal to transfer assets.¹⁴ Accordingly they are not deficient under the LMRA.

¹³ Even courts that reject ERISA preemption of the LMRA nonetheless recognize a need for judicial restraint in upsetting ERISA's balance. "Altering a pension plan's long-range actuarial assumptions can be risky business with repercussions extending to participants and times far beyond the case at hand." *Phillips v. Alaska Hotel Pension Fund*, 944 F.2d at 518.

¹⁴ Under 29 U.S.C. § 1411 they are permitted to transfer assets and liabilities but are not required to do so (except in very limited circumstances under 29 U.S.C. § 1415). Further, 29 U.S.C. § 1058 requires that benefits (on a termination basis) not be impaired by a transfer (*i.e.*, the ability to satisfy benefits out of current assets).

CONCLUSION

Central States was created nearly 40 years ago (other funds are older), and ERISA is almost 20 years old. It is, from a practical standpoint, a bit late in the day to discover a latent defect that turns on their heads the operating principles of these institutions and thereby destroys them. This Court should not do so without the clearest statutory command. The court of appeals disregarded the express language of the LMRA, ignored the commands of ERISA, subverted the policies of both statutes, and undermined the founding principle [insurance] of all multiemployer plans. This Court should reverse the decision below.

Respectfully submitted,

THOMAS C. NYHAN *

General Counsel

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APPENDICES

ALPHEOIDS

1a

APPENDIX A

TRUST AGREEMENT

**CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND**

AS AMENDED THROUGH DECEMBER 31, 1991

**REVISED AND AMENDED TRUST AGREEMENT
FOR CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND**

This AGREEMENT and DECLARATION of TRUST, made and entered into this sixteenth day of March, 1955 by and between CENTRAL CONFERENCE OF TEAMSTERS, SOUTHERN CONFERENCE OF TEAMSTERS, and their affiliated Local Unions, hereinafter referred to collectively as the "UNION", and the SOUTHERN MOTOR CARRIERS LABOR RELATIONS ASSOCIATION; MOTOR CARRIERS EMPLOYERS CONFERENCE—CENTRAL STATES; CARTAGE EMPLOYERS MANAGEMENT ASSOCIATION; CLEVELAND DRAYMEN ASSOCIATION, INC.; and—NORTHERN OHIO MOTOR TRUCK ASSOCIATION, INC.; for and on behalf of themselves, their constituent members, and such other Employers who are or may become parties hereto, hereinafter collectively referred to as the "EMPLOYER", and the individual Trustees, hereinafter referred to as the "TRUSTEES", selected as hereinafter described, accepting the Trust obligations herein declared:

WITNESSETH:

WHEREAS, the Union and the Employer believe that it is in the best interest of the Employees of such Employer represented by the Union, and the families and dependents of such Employees, to provide for retirement benefits and for that purpose to establish a Trust Fund as hereinafter provided; and

WHEREAS, the Union and the Employer have heretofore entered into collective bargaining agreements under the terms of which it is provided that the Employer shall contribute certain agreed-upon sums of money therein set forth to a Pension Fund, which shall be known as the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND; and

WHEREAS, Employee Trustees and Employer Trustees have been designated as the Trustees of the Trust in accordance with the provisions of such Agreement.

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the Union and the Employer hereby accept and adopt all of the provisions herein contained, and the Trustees declare that they will receive and hold the contributions and any other money or property which may come into their hands as Trustees (all such contributions, money and property being hereinafter referred to as "the Trust Fund"), with the powers and duties, uses, and purposes as hereinafter set forth, to-wit:

ARTICLE I

DEFINITION OF TERMS

Sec. 1. Employer—The term "Employer" as used herein shall mean any employer who is bound by a collective bargaining agreement with the Union, or any employer not presently a party to such collective bargaining agreement who satisfies the requirements for participation as established by the Trustees and agrees to be bound by this Agreement.

Sec. 2. Union—The term "Union" as used herein shall mean the CENTRAL CONFERENCE OF TEAMSTERS, THE SOUTHERN CONFERENCE OF TEAMSTERS, and their affected affiliated Local Unions, and such other unions as the Trustees may agree upon.

Sec. 3. Employee—The term "Employee" as used herein shall include:

- (a) A person who is employed under the terms and conditions of a collective bargaining agreement entered into between an Employer as herein defined and a Union as herein defined, and on whose behalf payments are required by such collective

bargaining agreement or applicable law to be made to the Fund by the Employer; or

- (b) All persons employed by the Union, upon being proposed by the Union and after acceptance by the Trustees; and as to such Union personnel the Union shall be considered an Employer solely for the purposes of contributions within the meaning of this Agreement and Declaration of the Trust and shall, on behalf of such personnel, make payments to the Trust at the times and at the rate of payment equal to that made by any other Employer who is a party to the Trust for the same benefits; or
- (c) All persons employed by the Central States, Southeast and Southwest Areas Pension Fund or Central States, Southeast and Southwest Areas Health and Welfare Fund upon acceptance by the Trustees; and as to such Trust personnel the Trustees shall be deemed an Employer, solely for the purpose of contributions, within the meaning of this Agreement and Declaration of Trust and shall, on behalf of such personnel, make payments to the Trust at the times and at the rate of payment equal to that made by any other Employer who is a party to the Trust for the same benefits.
- (d) All persons who are Trustees of Central States, Southeast and Southwest Areas Pension Fund or Central States, Southeast and Southwest Areas Health and Welfare Fund upon acceptance by the Trustees, as hereinafter defined; and on behalf of such persons who are Trustees, their Employers shall make or be presently required to make contributions to the Trust at the times and at the rate of payment equal to that required by any other Employer who is a party to the Trust for the same benefits.

- (e) In all instances the common law test or the applicable statutory definition of master-servant relationship shall control employee status.
- (f) The continuation of employee status once established shall be subject to such reasonable rules as the Trustees may adopt according to law.

Sec. 4. Trustees—The term “Trustees” or “Board” as used herein shall mean the Trustees designated in this Agreement and Declaration of Trust together with their successors designated and appointed in accordance with the terms of this Agreement.

Sec. 5. Trust Fund or Fund—The term “Trust Fund” or “Fund” as used herein shall refer to all property of whatever nature which shall be in said Trust created by this Agreement.

Sec. 6. Employer Contributions—The term “Employer Contributions” as used herein shall mean payments made by Employers to the Trust Fund herein created.

ARTICLE II

CREATION OF TRUST FUND AND BOARD OF TRUSTEES

Sec. 1. Designation—The Union and the Employer hereby create and establish, with the Trustees herein provided for, a Trust to be known as the Central States, Southeast and Southwest Areas Pension Fund which shall be comprised of assets derived from Employer Contributions made pursuant to the collective bargaining agreement between the parties (plus any additional sum or sums from Employer Contributions which may hereafter be agreed upon by the Employers and the Union set forth in written collective bargaining agreements), together with all insurance and annuity contracts (including dividends, refunds, or other sums payable to the Trustees on account of such insurance and annuity con-

tracts) and all investments made and held by the Trustees on account of such insurance and annuity contracts, all investments made and held by the Trustees, all moneys received by the Trustees as contributions or as income from investments made and held by the Trustees or otherwise, and any other property received and held by the Trustees for the uses, purposes, and trusts set forth in this Agreement and Declaration of Trust, where any of the foregoing is derived from the Employer Contributions.

Sec. 2. Board of Trustees—There is hereby created a Board of Trustees consisting of four (4) persons representative of the Employers and four (4) persons representative of the Employees. The Employer Trustees shall be designated as follows: One (1) Trustee shall be designated by each of the following Employer groups, acting either alone or jointly as herein indicated:

- A. Southern Motor Carriers Labor Relations Association;
- B. Cleveland Draymen Association, Inc., Northern Ohio Motor Truck Association, Inc., and Cartage Employers Management Association.

Two (2) Trustees shall be designated by the following Employer group:

- C. Motor Carriers Employers Conference—Central States.

The Employee Trustees shall be designated jointly by the Union, as defined in Article I, Section 2 of this Agreement.

No person shall be designated a Trustee by the appointing authority if the person is subject to the disqualification defined in Section 9 of Article XIV of this Agreement.

Effective April 1, 1983, the term of office of each Trustee is a multi-year period, subject to reappointment

of the same Trustee or appointment of another Trustee by the appointing entity at the end of such multi-year period, and also subject to appointment of a Successor Trustee pursuant to Section 5 of Article II of this Agreement. The multi-year period of every such appointment and reappointment of a Trustee effective on and after April 1, 1983 shall be four (4) years, *except* for the extension described in the remainder of this section, and *except* for the transition terms as follows: the Employer groups designed to appoint Employer Trustees will allocate and exercise their respective appointment authority to appoint Employer Trustees, without limitation of their separate and independent authority, as follows: one Employer Trustee to serve a term from April 1, 1983 through March 31, 1986; one Employer Trustee to serve a term from April 1, 1983 through March 31, 1987; one Employer Trustee to serve a term from April 1, 1983 through March 31, 1988; and one Employer Trustee to serve a term from April 1, 1983 through March 31, 1989; and the Union will allocate and exercise its authority to appoint Employee Trustees as follows: one Employee Trustee to serve a term from April 1, 1983 through March 31, 1986; one Employee Trustee to serve a term from April 1, 1983 through March 31, 1987; one Employee Trustee to serve a term from April 1, 1983 through March 31, 1988; and one Employee Trustee to serve a term from April 1, 1983 through March 31, 1989. Effective August 20, 1986 the multi-year term of office of each Trustee is extended until September 22, 1992, in connection with the initial minimum ten-year term of the Consent Decree entered on September 22, 1982 in *Brock v. Fitzsimmons, et al.*, No. 78 C 342 (N.D. Ill.). The term of office of each Trustee whose appointment would have expired March 31, 1987, except for the trust amendment adopted at Trustee meetings on August 19 and 20, 1986, or of the Successor Trustee appointed to replace such Trustee, will expire on March 31, 1993. The terms of office of each Trustee whose appointment

would have expired on March 31, 1988, 1989 and 1990, except for the same 1986 trust amendment, or of the Successor Trustee appointed to replace such trustee, will expire on March 31, 1994, 1995 and 1996, respectively, in order to effectuate an appointment or reappointment of one Employer Trustee and one Employee Trustee effective on each April 1 after September 22, 1992. All such expiration dates shall be determined on the basis of the the trust amendment adopted at Trustee meetings on August 19 and 20, 1986.

Sec. 3. Term of Trustees—Each Trustee shall serve until expiration of his term of office established in accordance with Section 2 of Article II of this Agreement or until, on a date prior to expiration of his term of office, he shall die, become incapable of acting hereunder, resign, become disqualified for the position under applicable law or under Section 9 of Article XIV of this Agreement, or be removed as herein provided.

Sec. 4. Manner of Acting in Event of Deadlock—In the event a deadlock develops between the Employer and Employee Trustees, or between the Trustees, the Trustees shall appoint a neutral party empowered to break such deadlock within a reasonable length of time. Such neutral party may be appointed in advance of any such deadlock. In the event the Trustees are unable to agree upon a neutral party, or in the event such neutral party is unable to act, either the Employer or the Employee Trustees may petition the District Court of the United States for the Northern District of Illinois, Eastern Division, for appointment of a neutral person, as provided in Section 302(c) of the Labor Management Relations Act of 1947, as amended.

Sec. 5. Vacancy in Board of Trustees—In case of vacancies by death, legal incapacity, resignation of otherwise of the Employer Trustees or Employee Trustees, a successor thereto shall be appointed as provided in Arti-

cle II, Section 2 hereof. Any Trustee or Trustees shall have the right to resign on written notice to the remaining Trustees, and to the Executive Director; said notice shall specify the effective date of such resignation, which shall be no later than fifteen (15) days after said notice is received by the Executive Director, except that said resignation shall in any event become effective no later than appointment of, and acceptance of appointment by, a Successor Trustee, in accordance with Article II, Section 7 of this Agreement.

Sec. 6. Removal of Trustees—Any Employer Trustee may be removed, with cause, at any time by the Employer association or group appointing such Employer Trustee; in the event of such removal of such Employer Trustee, the Employer association or group removing such Trustee shall appoint a Successor Trustee. Any Employee Trustee may be removed, with cause, at any time by the Union. The Trustees shall also have the authority and duty to act to remove a Trustee holding office in violation of law.

Sec. 7. Designation of Successor Trustee—In the event of a vacancy under either Section 5 or Section 6 above, the Successor Trustee shall be designated in writing by the appointing authority, and such Successor Trustee shall accept such appointment in writing in a form satisfactory to the Trustees. The term of office of any Successor Trustee shall be the remainder of that unexpired term. Both the designation and acceptance shall be filed with the Executive Director of the Fund.

Sec. 8. Limitation of Liability of Trustees—No Trustee shall be liable or responsible for any acts or defaults of any co-Trustee, any other fiduciary, any party-in-interest or any other person except in accordance with applicable law.

Sec. 9. Office of the Fund—The sole and principal office of the Fund shall be in Chicago, Illinois, for the

transaction of business of the Fund, the exact location of which is to be made known to the parties interested in such Fund. At such office, and at such other places as may be required by law, there shall be maintained all, or any of, the books and records pertaining to the Fund and its administration.

Sec. 10. No One is Agent Without Written Authority—No individual or person may act as agent for the Fund unless specifically authorized in writing by the Trustees. No Employer or Union nor any representative of any Employer or Union, in such capacity, is authorized to interpret the Pension Plan, nor can any such person act as agent of the Trustees. Only the Board of Trustees is authorized to interpret the Pension Plan within the scope of its authority.

ARTICLE III

CONTRIBUTIONS AND COLLECTIONS

Sec. 1. Amount of Contributions—Each Employer shall make continuing and prompt payments to the Trust Fund as required by the applicable collective bargaining agreement between the parties, applicable law, and the requirements for participation in the Fund as established by the Trustees in accordance with Article I, Section 1, Article IV, Sections 1, 2, 9 and 14(e), Article X, and Article XII of this Trust Agreement. The Trustees reserve the right to reject contributions from any Employer whose collective bargaining agreement or other agreement or understanding fails to satisfy applicable law or the requirements for participation in the Fund. Upon execution of each new or successive collective bargaining agreement, including but not limited to interim agreements and memoranda of understanding between the parties, each Employer shall promptly submit such contract by certified mail to the:

Contracts Department
Central States, Southeast and
Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, Illinois 60018-4938.

Any agreement or understanding between the parties that in any way alters or affects the Employer's contribution obligation as set forth in the collective bargaining agreement shall be submitted promptly to the Fund in the same manner as the collective bargaining agreement; any such agreement or understanding between the parties that has not been disclosed to the Fund as required by this paragraph shall not be binding on the Trustees and shall not affect the terms of the collective bargaining agreement which alone shall be enforceable. The obligation to make such contributions shall continue during periods when the collective bargaining agreement is being negotiated, but such contributions shall not be required in case of strike after contract termination, unless the parties mutual'y agree otherwise.

Sec. 2. Time of Payment—The Trustees shall, by regulation, fix the time for payment of contributions and shall sent a copy of such regulations to each Employer required to contribute.

Sec. 3. Receipt of Payment and Other Property of Trust—The Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made by the Employers to the Trust Fund, and the Trustees are hereby vested with all right, title and interest in and to such moneys and all interest accrued thereon, and are authorized to receive and be paid the same. The Trustees agree to receive all such payments, deposits, moneys, insurance and annuity contracts, and other assets and properties described or referred to in Article II and this Article, and to hold same in Trust hereunder for the uses and purposes of the Trust herein created.

Sec. 4. Collections and Enforcement of Payment—The Trustees, or such committee of the Trustees as the Board

of Trustees shall appoint, or the Executive Director when directed by such committee or by the Trustees, shall have the power to demand and collect the contributions of the Employers to the Fund. Said Board of Trustees shall take such steps, including the institution and prosecution of, and intervention in, any legal proceedings as the Trustees in their discretion deem in the best interest of the Fund to effectuate the collection or preservation of contributions or other amounts which may be owed to the Trust Fund, without prejudice, however, to the rights of the Union to take whatever steps which may be deemed necessary for such purpose. The Trustees are authorized to receive all Employer Contributions and apply such contributions in the best interest of the Fund. Nothing herein shall give any Employer the right to designate how any contributions shall be applied.

Sec. 5. Production of Records—Each Employer shall promptly furnish to the Trustees, upon reasonable demand, the names and current addresses of its Employees, their Social Security numbers, the hours worked by each Employee and past industry employment history in its files and such other information as the Trustees may reasonably require in connection with the administration of the Trust. The Trustees may, by their representatives, examine the pertinent records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. All Employers shall annually furnish to the Trustees, if requested by them, a statement showing whether:

- (a) the organization is a corporation and the names of all of its officers;
- (b) if not a corporation, a certificate stating that it is either a partnership or an individual proprietorship and the names of the partners or the name of the individual proprietor.

The Union will comply with any reasonable request of the Trustees to examine those records of the Union which may indicate the employment record of any Employee whose status is in dispute. The names and addresses of participants and beneficiaries are confidential information not to be disclosed by the Trustees except as required by an order of a court of competent jurisdiction, except where necessary for determination of benefits in accordance with the provisions of the Trust Agreement, or as required by law.

ARTICLE IV

POWERS AND DUTIES OF TRUSTEES

Sec. 1. The Trustees shall have authority to control and manage the operation and administration of the Trust in accordance with applicable law.

Sec. 2. The Trustees shall hold, manage, care for, and protect the Trust Fund and collect the income therefrom and contributions thereto, except to the extent that any of these functions or responsibilities are assigned to another entity or entities pursuant to any provision of this Article.

Sec. 3.

- (a) The Trustees appoint Morgan Stanley Group Inc. (hereinafter identified as "Morgan Stanley") as Named Fiduciary of the Fund as defined in Section 402 of the Employee Retirement Income Security Act of 1974, with such rights, powers, authority, duties and responsibilities as are stated in an agreement dated as of October 27, 1989 (hereinafter identified as "the Named Fiduciary Agreement"), entered into by the Trustees with Morgan Stanley, and as are stated in a Consent Decree (hereinafter identified as "the Consent Decree") entered September 22, 1982 in an action styled *Brock v. Fitzsimmons, et al.*, No. 78 C 342 (N.D.

Ill.). The effective date of the appointment of Morgan Stanley as Named Fiduciary of the Fund is January 20, 1984, and such appointment shall remain effective until termination or resignation in accordance with the Named Fiduciary Agreement.

- (b) Each Investment Manager appointed by Morgan Stanley in its capacity as Named Fiduciary of the Fund shall have the power and authority, in its sole discretion, to invest and reinvest the principal and income of the Trust Fund, delegated to it for management, in such securities, common and preferred stock, mortgages, notes, real estate or other property as shall be permissible investments in accordance with applicable law and agreements, and may sell or otherwise dispose of such securities or property at any time and from time to time as it determines to be in accordance with its fiduciary obligations.
- (c) Morgan Stanley shall have the power and authority, in its sole discretion, to invest and reinvest assets of the Fund in the following group trusts, selected and designated by Morgan Stanley and maintained as domestic trusts in the United States: Mellon Bank, N.A. Employee Benefit Collective Investment Fund Plan, which is maintained by Mellon Bank, National Association; Wells Fargo Institutional Trust Company Index and Market Group and Common Trust Funds for Employee Benefit Trusts, which is maintained by Wells Fargo Institutional Trust Company, National Association; and Wells Fargo Institutional Trust Company Group and Common Investment Trust Funds for Employee Benefit Trusts, which is maintained by Wells Fargo Institutional Trust Company, National Association. To the extent Morgan Stanley invests the Trust Fund in such

group trusts, the group trusts will be adopted as part of the Fund and the trust instruments of such group trusts and any amendments of those instruments will be incorporated in this Agreement, provided that such trusts are tax-exempt organizations under Section 501(a) of the Internal Revenue Code.

- (d) With respect to all assets of the Fund except those assets which are then subject to the exercise by Morgan Stanley of its rights, powers, authority, duties and responsibilities as Named Fiduciary of the Fund, the Trustees shall have the power, in their sole discretion, to invest and reinvest all or any part of the Trust Fund in such securities and other property as shall be permissible investments by them in accordance with applicable law, and may sell or otherwise dispose of such securities or other property at any time and from time to time as they determine to be in accordance with their fiduciary obligations.
- (e) The overall investment policy objective of the Fund is to invest and manage the assets of the Trust Fund in a prudent and conservative yet productive manner, in order to enhance the ability of the Fund to meet its obligations to participants and beneficiaries. Subject to the overall investment policy objective of the Fund, Morgan Stanley shall develop the short-term and long-term investment objectives and policies of the Fund, in accordance with the Consent Decree, after consultation with the Trustees and with appropriate regard for the actuarial requirements of the Fund.

Sec. 4. With respect to all assets of the Fund except those assets which are then subject to the exercise by Morgan Stanley of its rights, powers, authority, duties and responsibilities as Named Fiduciary or of the Fund, any part of the Trust Fund which is not invested shall

be deposited by the Trustees in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits, or disbursements therefrom, shall be made in the name of the Trust in the manner designated by the Trustees and upon the signature(s) designated by the Trustees.

Sec. 5. The Trustees shall keep true and accurate books of account and a record of all their transactions.

Sec. 6.— The Trustees shall engage one or more independent qualified public accountants and enrolled actuaries to perform all services required by and in accordance with applicable law and such other services as the Trustees deem necessary.

Sec. 7. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram, or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

Sec. 8. Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

Sec. 9. The Trustees are hereby authorized to formulate and promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust, provided the same are not inconsistent with the terms of the Agreement, and the Articles in the Central States, Southeast and Southwest Areas Agreements creating the Pension Fund. All rules and regulations adopted by action of the Trustees for the administration of the Trust Fund shall be binding upon all parties hereto, all parties dealing with the Trust, and all persons claiming any benefits

hereunder. The Trustees are vested with discretionary and final authority in adopting rules and regulations for the administration of the Trust Fund.

Sec. 10. Any Successor Trustee appointed in accordance with the provisions of this Agreement, upon accepting in writing the terms of this Trust, in a form satisfactory to the Trustees, shall be vested with all of the rights, powers and duties of his predecessor.

Sec. 11.

- (a) The Trustees may assign, from time to time, various administrative matters to such committees and subcommittees of Trustees, or to such other individuals or organizations, as they may deem necessary or appropriate in their sole discretion. The Trustees may also assign and delegate, from time to time, specified trustee responsibilities to committees and subcommittees of Trustees, as they deem necessary or appropriate in their sole discretion. Committees and subcommittees of Trustees shall consist of an equal number of Employer and Employee Trustees.
- (b) The Trustees may establish a Public Advisory Board consisting of four (4) persons, two (2) to be designated by a majority of the Employer Trustees and two (2) to be designated by a majority of the Employee Trustees. Such Public Advisory Board, if established, shall act solely in an advisory and consultant capacity and shall not have or exercise any fiduciary powers, responsibilities or duties. None of the members of said Board, individually or collectively, shall have or exercise any discretionary authority or discretionary control respecting management of the Fund, or have or exercise any authority or control respecting management or disposition of any assets of the Fund, or render any investment advice for any fee

or other consideration, or have or exercise any discretionary authority or discretionary responsibility in the administration of the Fund. The Trustees shall establish procedures for submission of matters to the Public Advisory Board, if established, for advice and consultation by said Board. Any payment of compensation and expenses for members of said Board shall be determined by the Trustees.

- (c) The Trustees shall appoint an Executive Director, who shall, subject to the directions of the Trustees with respect thereto, be responsible to the Trustees and/or any committee thereof for coordinating the administration of the Fund's assets, office and personnel, for the coordination and administration of accounting and actuarial services, for the preparation of all reports and other documents required to be filed or issued in accordance with law, for the performance of ministerial duties in conformance therewith, and for such other duties duly assigned to him by action of the Trustees. The Executive Director shall be the custodian of the documents and other records of the Fund. To the extent this subsection is contrary to or inconsistent with the Named Fiduciary Agreement, in its description of authority and responsibility of the Executive Director, this subsection shall be inapplicable.
- (d) There shall exist an internal audit division of the Fund, for review of administrative expenditures, benefit disbursements and the allocation of income between investments, administration and benefits, and for such other responsibilities as may be assigned by the Executive Director.

Sec. 12. No party dealing with the Trustees shall be obligated:

- (a) to see the application to the trust purposes, herein stated, of any money or property belonging to the Trust Fund, or
- (b) to see that the terms of this Agreement have been complied with, or
- (c) to inquire into the necessity or expediency of any act of the Trustees.

Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon:

- (1) that at the time of the delivery of said instrument the Trust was in full force and effect,
- (2) that the instrument was executed in accordance with the terms and conditions of this Agreement, and
- (3) that the Trustees were duly authorized and empowered to execute the instrument.

Sec. 13. The Trustees shall, by regulation, establish rules relating to payments of contributions by Employers for Employees during periods of such Employees' illness or disability and related matters but not contrary to applicable collective bargaining agreements.

Sec. 14. The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law:

- (a) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Employees involved.

- (b) To keep property and securities registered in the names of the Trustees or in the name of any other individual or entity duly designated by the Trustees.
- (c) To establish and accumulate as part of the Trust Fund a reserve or reserves, adequate, in the opinion of the Trustees and in accordance with applicable law, to carry out the purposes of such Trust.
- (d) To pay out of the funds of the Trust all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof.
- (e) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.
- (f) To sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith, except that the powers enumerated in this subsection shall not be exercisable by the Trustees with respect to those assets of the Fund as are then subject to the exercise by Morgan Stanley of its rights, powers, authority, duties and responsibilities as Named Fiduciary of the Fund.

Sec. 15. The Trustees shall be entitled to receive reasonable compensation for services rendered, and the reimbursement of expenses properly and actually incurred, in the performance of their duties to the Fund; except that no Trustee who already receives full-time pay from

an Employer or an association of Employers or from the Union shall receive compensation from the Fund, except for reimbursement of expenses properly and actually incurred.

Section 16. The Trustees shall use and apply the Trust Fund for the following purposes:

(a) To pay or provide for—

- (1) the payment of all reasonable and necessary expenses of collecting the contributions and administering the affairs of this Trust, including the employment of such administrative, legal, actuarial, expert, and clerical assistance as may be reasonably necessary.
- (2) the purchasing, owning or leasing of such premises as may be necessary for the operation of the affairs of the Trust, and
- (3) the purchase or leasing of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate to the performance of their duties.

(b) To pay or provide for the payment of retirement and related benefits to eligible Employees in accordance with the terms, provisions and conditions of the Pension Plan to be formulated and agreed upon hereunder by the Trustees.

Sec. 17. The Trustees, by majority action, shall have the power to construe the provisions of this Agreement and the terms and regulations of the Pension Plan; and any construction adopted by the Trustees in good faith shall be binding upon the Union, Employees and Employers. The Trustees are vested with discretionary and final authority in construing plan documents of the Pension Fund.

Sec. 18. The Trustees, by resolution, shall provide for fidelity bonds, in such amounts as they may deter-

mine, for their employees and for the Trustees, the cost of which shall be paid by the Fund. The Trustees may purchase insurance coverage to protect the Fund from liability arising out of any error or omission of any Trustee or employee of the Trust, in accordance with applicable law, the cost of which policy shall be paid by the Fund.

ARTICLE V

CONTROVERSIES AND DISPUTES

Sec. 1. In any controversy, claim, demand, suit at law, or other proceeding between any participant, beneficiary, or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record, and any other evidence pertinent to the issue involved.

Sec. 2. All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the Fund or the operation thereof, whether as to any claim for any benefits preferred by any participant, beneficiary, or any other person, or whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees or of this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees, or to a committee of Trustees, and the decision of the Trustees or of such committee thereof shall be binding upon all persons dealing with the Fund or claiming any benefit thereunder. The Trustees are vested with discretionary and final authority in making all such decisions, including Trustee decisions upon claims for benefits by participants and beneficiaries of the Pension Fund and other claimants, and including Trustee decisions construing plan documents of the

Pension Fund. To the extent this section is contrary to or inconsistent with the Named Fiduciary Agreement, this section shall be inapplicable.

Sec. 3. The Trustees may, in their sole discretion, compromise or settle any claim or controversy in such manner as they think best, and any decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust. To the extent this section is contrary to or inconsistent with the Named Fiduciary Agreement, this section shall be inapplicable.

ARTICLE VI

OPERATION OF BOARD OF TRUSTEES

Sec. 1. Officers—The Board of Trustees shall at each meeting designate a presiding Chairman. The Chairmanship shall be rotated between the Employee Trustees and the Employer Trustees.

Sec. 2. Quorum—A quorum of the Trustees for the transaction of business, except as otherwise specifically provided herein, shall consist of at least four (4) Trustees, two (2) of whom shall be representative of the Employers and two (2) of whom shall be representative of the Employees. A quorum of a committee shall consist of a majority of the members thereof. Upon each matter voted upon at any meeting of the Trustees, the Employee Trustees and the Employer Trustees shall each have the same number of votes based upon the larger number of Employee or Employer Trustees in attendance, as the case may be;—provided, however, that the vote or votes cast by each such Trustee shall be cast as an individual Trustee and not as a part of a block. All actions of the Trustees at meetings shall be by majority vote of those present and voting, a quorum being present. No Trustee may vote by proxy.

Sec. 3. Records of Trustee Action—The Trustees shall make and maintain a record of the actions of the Trustees taken at any meeting thereof. Any action, which may be taken at a meeting of the Trustees, may be taken without a meeting of the Trustees if a consent in writing, setting forth the action so taken, should be distributed to all of the Trustees and should be signed by five (5) of the Trustees, said written consent evidencing the substance of the action of the Trustees so taken.

Sec. 4. Reports—All reports required by law to be signed by one or more Trustees shall be signed by all of the Trustees, provided that all of the Trustees may appoint in writing one or more of their number to sign such report on behalf of the Trustees.

Sec. 5. Power to Act in Case of Vacancy—No vacancy or vacancies in the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Agreement, to administer the affairs of the Trust notwithstanding the existence of such vacancy or vacancies.

Sec. 6. Expenses—All proper and necessary expenses incurred by any former or incumbent Trustee, including costs of defense in litigation arising out of the Trusteeship of this Fund, and also including costs incurred by any former or incumbent Trustee in providing testimony or information about administering of this Fund in any investigation, trial or other proceeding, shall be paid out of the Trust Fund, as a matter of right of any former or incumbent Trustee, to the extent permitted by applicable law. As used in the preceding sentence, the term "costs" includes, but is not limited to, reasonable attorneys' fees.

Sec. 7. Meetings—Regular meetings of the Trustees shall be held on the third Wednesday of each month, and on such other days as the Trustees determine, except that such regular monthly meeting date may be changed or postponed either by the Board of Trustees in regular meeting assembled or otherwise by written decision signed

by a majority of the Trustees. Any two (2) Trustees may request a meeting of the Trustees at any time by notifying the Executive Director, who shall arrange the time and place thereof. Written notices of meetings may be delivered in person, by mail, or by telegram. Meetings of the Trustees may also be held at any time without notice if all the Trustees consent thereto.

ARTICLE VII

ESTABLISHMENT OF PENSION PLAN

Sec. 1. Formulation of Plan—The Trustees shall formulate a Pension Plan for the payment of such retirement pension benefits, permanent disability pension benefits, death benefits, and related benefits, as are feasible. Such Pension Plan shall at all times comply with all applicable federal statutes and regulations and with the provisions of this Trust Agreement. The Trustees shall not be under any obligation to pay any pension if the payment of such pension will result in loss of the Fund's tax-exempt status under the then applicable Internal Revenue Code and any regulations or rulings issued pursuant thereto. The Trustees shall draft procedures, regulations, and conditions for the operation of the Pension Plan, including, by way of illustration and not limitation: conditions of eligibility for covered Employees, procedures for claiming benefits, schedules of type and amount of benefits to be paid, and procedures for the distribution of benefits. The Trustees may also provide for the payment of partial pensions, any may enter into agreements with trustees of other pension plans which conform to the applicable sections of the then applicable Internal Revenue Code for purposes of tax deductions, for the reciprocal recognition of service credits and payments of pension benefits based upon such service credits.

Sec. 2. The Trustees shall provide participants and beneficiaries such information as is required by law.

Sec. 3. Amendment of Plan—The Pension Plan may be amended by the Trustees from time to time, provided

that such amendments comply with the applicable sections of the then applicable Internal Revenue Code, all applicable federal statutes and regulations, the contract articles creating the Pension Fund, and the purposes set forth in this Agreement. Additionally and not by way of limitation, the Trustees may amend the Pension Plan, in future, or retroactively, where they deem it necessary to maintain the continuation of the Fund's tax-exempt status or to preserve compliance with the then applicable Internal Revenue Code, applicable federal statutes, and any regulations or rulings issued with respect thereto. A copy of each amendment of the Pension Plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees, and one copy thereof shall be distributed to the Union and to each Employer or Employer group signatory to this Trust Agreement.

ARTICLE VIII

SPENDTHRIFT CLAUSE

All benefit payments to participants or beneficiaries, if and when such payments shall become due, shall, except as to persons under legal disability, or as provided in this section and in Article IX, be paid to such participants or beneficiaries in person and shall not be grantable, transferable, or otherwise assignable in anticipation of payment thereof, in whole or in part, by the voluntary or involuntary acts of any such participants or beneficiaries, or by operation of law, and shall not be liable or taken for any obligation of such participants or beneficiaries. Upon receipt of written direction from any eligible recipient of monthly benefit payments, the Pension Fund will participate in an arrangement to make deductions from each monthly benefit payment, as authorized and directed by the recipient, and to transfer the amount of each such deduction to the Central States, Southeast and Southwest Areas Health and Welfare Fund as the recipient's monthly contribution to retain eligibility for coverage pursuant to the retiree benefit

plan established by that fund. This deduction-transfer arrangement is effective commencing October 1, 1988 and will continue, relative to each such recipient who authorizes and directs it, until the Pension Fund receives the recipient's written cancellation of such authority and direction (or the earlier termination of benefits). Any authority and direction to the Pension Fund by a recipient of monthly benefit payments, to make such deductions and transfers, is revocable at any time by the recipient.

ARTICLE IX

PAYMENTS TO PERSONS UNDER LEGAL DISABILITY

In case any benefit payments hereunder become payable to a person under legal disability, or to a person not adjudicated incompetent but, by reason of mental or physical disability, in the opinion of the Trustees, is unable to administer properly such payments, then such payments may be paid out by the Trustees for the benefit of such person in such of the following ways as they think best, and the Trustees shall have no duty or obligation to see that the payments are used or applied for the purpose or purposes for which paid:

- (a) directly to any such person;
- (b) to the legally appointed guardian or conservator of such person;
- (c) to any spouse, parent, brother, or sister of such person for his welfare, support and maintenance;
- (d) by the Trustees using such payments directly for the support, maintenance and welfare of any such person.

ARTICLE X

AMENDMENT OF AGREEMENT

It is anticipated that in the administration of this Trust conditions may arise that are not foreseen at the time of the execution of this Agreement, and it is the in-

tention of the parties that the power of amendment, which is hereinafter given, be exercised in order to carry out the provisions of this Trust, among which is to pay the largest benefits possible, which are consistent with the number of participants becoming and likely to become eligible for such payments, the amounts of funds which are available and which will probably become available, and the following of sound actuarial practice. Therefore, the power is given to the Trustees to amend this Agreement by majority, vote at any time and from time to time, and all parties to the Trust, and all persons claiming an interest thereunder, shall be bound thereby, and no participant, Employee member, beneficiary, or any other person shall have any vested interest or right in the Trust Fund or in any payment from the Trust Fund, except as provided by law. The Trustees have full authority to amend, repeal, add to, or take away any right of payment, retroactively or otherwise, that they deem proper for the preservation of this Trust; provided, however, in no event shall the Trust Fund be used for any purpose other than the purposes set forth in this Trust Agreement, and for the purposes of paying the necessary expenses incurred in the administration of this Trust. All amendments to this Agreement shall comply with applicable sections of the Internal Revenue Code, other applicable federal statutes and the Contract Articles creating the Pension Fund.

ARTICLE XI

TERMINATION OF TRUST

Sec. 1. This Trust shall cease and terminate upon the happening of any one or more of the following events:

- (a) In the event the Trust Fund shall be, in the opinion of the Trustees, inadequate to carry out the intent and purposes of this Agreement, or to meet the payments due or to become due under this Agreement to persons already drawing benefits.

- (b) In the event there are no individuals living who can qualify as Employees hereunder.

Sec. 2. In the event this Trust shall terminate for any of the reasons set forth in Section 1 of this Article XI, the Trustees shall allocate the Trust Fund among participants and beneficiaries of the Pension Plan in the following order:

- (a) First, to that portion of each individual's accrued benefit which is derived from the participant's contributions to the Pension Plan.
- (b) Second, in the case of benefits payable as an annuity—
 - (1) In the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the Pension Plan, to each such benefit based on the provisions of the Pension Plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.
 - (2) In the case of a participant's or beneficiary's benefit which would have been in pay status as of the beginning of the 3-year period ending on the termination date of the Pension Plan if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of an annuity under the Pension Plan) as of the beginning of such period, to each such benefit based on the provisions of the Pension Plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For the purpose of subparagraph (1) the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

- (c) Third, to all other nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of termination of the Pension Plan) subject to the limitation that such nonforfeitable benefits shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—
- (1) his average monthly gross income from his Employer during the 5 consecutive calendar year period during which his gross income from that Employer was greater than during any other such period with that Employer, or
 - (2) \$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under Section 230 of the Social Security Act) in effect at the time the Pension Plan terminates and the denominator of which is the contribution and benefit base in effect in calendar year 1974.
- (d) Fourth, to all other nonforfeitable benefits under the Pension Plan.
- (e) Fifth, to all other benefits under the Pension Plan.
- (f) If the assets available for allocation under any priority category (other than 2 (d) and 2 (e) above) are insufficient to satisfy in full the benefits of all individuals, the assets shall be allocated pro rata among such individuals on the basis of the present value as of the termination date of their respective benefits. To the extent funded, the rights of all participants to benefits accrued as of the date of termination are nonforfeitable.

ARTICLE XII

EXTENSION OF PLAN

Sec. 1. Extension of Trust—The Trustees are authorized to extend the coverage of this Agreement and Trust

to such other Employers and Employees as the Trustees shall agree upon, provided such Employers and Employees are required to conform to the terms and conditions of this Trust and to make the same rate of payments required of the Employers herein, for the same benefits.

Sec. 2. Reciprocity Agreements—The Trustees shall be authorized to enter into reciprocity agreements with other labor organizations and other pension funds in which such labor organizations participate.

Sec. 3. Merger—The Trustees shall have the power to merge with any other fund established for similar purposes as this Fund, under terms and conditions mutually agreeable to the respective Boards of Trustees. No participant's or beneficiary's accrued benefit will be lower immediately after the effective date of any such merger than the benefit immediately before that date.

ARTICLE XIII

VESTING OF RIGHTS

The Trustees shall establish standards for the vesting of benefits which conform to no less than the minimum standards required by law. No Employee or other person shall have any vested interest or right in the Trust Fund except as provided by the Trustees in conformance with applicable law.

ARTICLE XIV

MISCELLANEOUS

Sec. 1. The Trustees will issue a credit for contributions that have been billed to an Employer if (1) the related work history was reported by mistake of fact or law (other than a mistake about plan qualification or tax-exempt status pursuant to the Internal Revenue Code) as determined by the Trustees and (2) the request for credit is received within ten years after the related work history was billed. If an Employer no longer has

an obligation to contribute to the Fund and has satisfied his withdrawal liability assessment, the Trustees will refund contributions paid by an Employer to the Trust if (1) such contributions were made by a mistake of fact or law (other than a mistake about plan qualification or tax-exempt status pursuant to the Internal Revenue Code) as determined by the Trustees and (2) application therefor is received within ten years after payment of the contributions. An Employer shall not have a right to a refund of contributions made more than ten years prior to his application therefor. No interest shall be paid on any credits or refunds approved. In no event shall Employers, directly or indirectly, participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund.

Sec. 2. The Union or the Employer may, at any time, demand of the Trustees an accounting with respect to any and all accounts upon agreement to pay necessary expenses thereof. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and judicial determination of any questions in connection with the administration or distribution thereof. Any Trustee who has resigned, been removed from office, or not been reappointed shall execute all instruments necessary to transfer the Trust Fund.

Sec. 3. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until an adjudication of such question or dispute, satisfactory to the Trustees, in their sole discretion, shall have been made, or the Trustees shall have been adequately indemnified against loss to their satisfaction.

Sec. 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer

shall be obligated to pay interest on the moneys due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including, but not limited to, attorneys' fees and such fees for late payment as the Trustees determine and as permitted by law. The interest payable by an Employer, in accordance with the preceding sentence, shall be computed and charged to the Employer at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by Chase Manhattan Bank (New York, New York) for the fifteenth (15th) day of the month for which the interest is charged. Any judgment against an Employer entered on and after September 26, 1980, for contributions owed to this Fund shall include by mandate of the court the greater of (a) a doubling of the interest computed and charged in accordance with this section or (b) liquidated damages based on the unpaid contributions only (exclusive of interest) as determined by the court in the amount of 20% in accordance with the Multi-employer Pension Plan Amendments Act of 1980 and the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1132(g) (2) (C) (i) and (ii).

Sec. 5. Where used in this Agreement, words in the masculine shall be read and construed as in the feminine, and words in the singular shall be read and construed as though used in the plural, in all cases where such construction would so apply.

Sec. 6. The Article titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Agreement or be construed as part thereof.

Sec. 7. This Agreement shall in all respects be construed according to and governed by the laws of the State of Illinois, including but not limited to the laws applicable to the rate of interest in the State of Illinois, except as such laws may be preempted by the laws and regulations of the United States. In all actions taken by the Trustees

to enforce the terms of this Trust Agreement, including but not limited to actions to collect delinquent contributions from employers or to conduct audits of contributing employers' records as authorized by Article III of this Agreement, the ten-year Statute of Limitations applicable to actions on written contracts in the State of Illinois shall apply.

Sec. 8. The method of computation of any employer withdrawal liability imposed by the Multiemployer Pension Plan Amendments Act of 1980 and payable to the Trust Fund shall be the Modified Basic Method (Two Pool Approach) as described in Section 4211 (c) (2) of the Employee Retirement Income Security Act of 1974, as amended, to be applied with a graduated increase in the extended period for determination of specific employer withdrawal liability allocations (5-year period in 1980, 6-year period in 1981, and so on until a 10-year period in 1985 and subsequent years), as described in Section 4211 (c) (5) (C) of the Employer Retirement Security Act of 1974, as amended, relative to any employer withdrawal after September 25, 1980.

Sec. 9. No person shall serve, or be permitted to serve, as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee adviser provider of goods or services or consultant of the Fund or as its representative in any capacity, or to serve in any capacity that involves decision making authority or custody or control of the moneys, funds or assets of the Fund, if such person has been convicted of: robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802 (6) of title 21 of the United States Code (hereinafter referred to as the "Code"), murder, rape, kidnapping, perjury, assault with intent to kill, any crime described in section 80a-9(a) (1) of title 15 of the Code, a violation of any provision of the Employee Retirement Income Security Act of 1974, a violation of section 186 of title 29 of the Code, a violation

of chapter 63 of title 18 of the Code, a violation of sections 874, 1027, 1503, 1505, 1506, 1510, 1951 or 1954 of title 18 of the Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959, or any felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit any such crimes; or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element; or a misdemeanor involving a breach of fiduciary responsibility. Upon conviction of any of the crimes described in the preceding sentence, such person shall immediately be disqualified from serving the Fund in any capacity described in the preceding sentence, and any such service shall immediately be terminated; provided that, upon final reversal of such conviction, such person, unless otherwise ineligible, shall thereafter be eligible to serve the Fund; and provided further that this disqualification shall continue in effect until ten (10) years after such conviction or after the end of imprisonment on such conviction, whichever is the later, unless, prior to the end of such ten-year period, in the case of a person so convicted or imprisoned, (a) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (b) the United States Parole Commission, pursuant to applicable law, determines that such person's service would not be contrary to the best interests of the Fund.

ARTICLE XV

BENEFICIAL RIGHTS

No Employer or Union, or Employees, shall have any right, title or interest in or to the Trust Fund or any part thereof other than vesting under the Pension Plan except in accordance with applicable law. There shall be no pro rata or other distribution of any of the assets of the Fund as a result of any Union, Employer or group of Employees of Employers ceasing their participation in

this Fund for any purpose or reason, except as required by law.

ARTICLE XVI

SAVINGS CLAUSE

Should any provision of this Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely effect the other provisions herein contained or the application of such provision to any other person or instance, unless such illegality shall make impossible the functioning of the Pension Plan. No Trustee shall be held liable for any act done or performed in pursuance of any provision hereof prior to the time such act or provision shall be held unlawful by a court of competent jurisdiction.

APPENDIX B

**REVISED AND AMENDED
TRUST AGREEMENT FOR CENTRAL STATES,
SOUTHEAST AND SOUTHWEST AREAS
HEALTH AND WELFARE FUND**

IMPORTANT

This Trust Agreement for the Central States, Southeast and Southwest Areas Health & Welfare Fund was first executed on March 14, 1950, which, in turn authorized creation of the Central States, Southeast and Southwest Areas Health & Welfare Fund. The Trust Agreement has since been amended on numerous occasions. The most recent amendments to the Trust Agreement were adopted on July 21, 1982. This version incorporates all amendments to the Trust Agreement as of that date.

REVISED AND AMENDED
TRUST AGREEMENT FOR CENTRAL STATES,
SOUTHEAST AND SOUTHWEST AREAS
HEALTH AND WELFARE FUND

This AGREEMENT and DECLARATION of TRUST, made and entered into this 14th day of March, 1950, by and between CENTRAL CONFERENCE OF TEAMSTERS, SOUTHERN CONFERENCE OF TEAMSTERS, and their affiliated Local Unions, hereinafter referred to collectively as the "UNION" and the SOUTHEASTERN AREA MOTOR CARRIERS LABOR RELATIONS ASSOCIATION; SOUTHWEST OPERATORS ASSOCIATION; and MOTOR CARRIERS EMPLOYERS CONFERENCE-CENTRAL STATES; for and on behalf of themselves, their constituent members, and such other Employers who are or may become parties hereto, hereinafter collectively referred to as the "EMPLOYER" and the individual Trustees, hereinafter referred to as the "TRUSTEES" selected as hereinafter described, accepting the Trust obligations herein and declared:

WITNESSETH:

WHEREAS, the Union and the Employer believe that it is in the best interest of the Employees of such Employer represented by the Union, and the families and dependents of such Employees, to provide for health and welfare benefits and for that purpose to establish a Trust Fund as hereinafter provided; and

WHEREAS, the Union and the Employer have heretofore entered into collective bargaining agreements under the terms of which it is provided that the Employer shall contribute certain agreed-upon sums of money therein set forth to a Health and Welfare Fund, which shall be known as the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND; and

WHEREAS, Employee Trustees and Employer Trustees have been designated as the Trustees of the Trust in accordance with the provisions of such Agreement.

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the Union and the Employer hereby accept and adopt all of the provisions herein contained, and the Trustees declare that they will receive and hold the contributions and any other money or property which may come into their hands as Trustees (all such contributions, money and property being hereinafter referred to as "the Trust Fund"), with the powers and duties, uses, and purposes as hereinafter set forth, to wit:

ARTICLE

1. DEFINITION OF TERMS.

SECTION

1. Employer—The term "Employer" as used herein shall mean any association or individual Employer who has duly executed and is bound by a collective bargaining agreement with the Union, or any employer not presently a party to such collective bargaining agreement who satisfies the requirements for participation as established by the Trustees and agrees to be bound by this Agreement.

SECTION

2. Union—The term "Union" as used herein shall mean the CENTRAL CONFERENCE OF TEAMSTERS and SOUTHERN CONFERENCE OF TEAMSTERS and their affected affiliated Local Unions, and such other unions as the Trustees may agree upon.

SECTION

3. Employee—The term "Employee" as used herein shall include:
- (a) A person who is employed under the terms and conditions of a collective bargaining agreement entered into between an Employer as herein defined and a Union as herein defined, and on whose behalf payments are required by such collective bargaining agreement or applicable law to be made to the Fund by the Employer; or
 - (b) All persons employed by the Union, upon being proposed by the Union and after acceptance by the Trustees; and as to such Union personnel the Union shall be considered as Employer, solely for the purposes of contributions, within the meaning of this Agreement and Declaration of Trust and shall, on behalf of such personnel, make payments to the times and at the rate of payment equal to that made by any other Employer who is a party to the Trust for the same benefits; or
 - (c) All persons employed by the Central States, Southeast and Southwest Areas Health & Welfare Fund or by the Central States, Southeast and Southwest Areas Pension Fund upon acceptance by the Trustees; and as to such Trust personnel the Trustees shall be deemed an Employer, solely for the purpose of contributions, within the meaning of this Agreement and Declaration of Trust and shall, on behalf of such personnel, make payments to the Trust at the times and at the rate of payment equal to that made by any other Employer who is a party to the Trust for the same benefits;

- (d) All persons who are Trustees of Central States, Southeast and Southwest Areas Health and Welfare Fund or Central States Southeast and Southwest Areas Pension Fund upon acceptance by the Trustees, as hereinafter defined; and on behalf of such persons who are Trustees, their Employers shall make or be presently required to make contributions to the Trust at the times and at the rate of payment equal to that required by any other Employer who is a party to the Trust for the same benefits.
- (e) In all instances, the common law test, or the applicable statutory definition, of master-servant relationship shall control employee status;
- (f) The continuation of employee status once established shall be subject to such reasonable rules as the Trustees may adopt according to law.

SECTION

- 4. Trustees—The term "Trustees" or "Board" as used herein shall mean the Trustees designated in this Agreement and Declaration of Trust, together with their successors designated and appointed in accordance with the terms of this Agreement.

SECTION

- 5. Trust Fund or Fund—The term "Trust Fund" or "Fund" as used herein shall refer to all property of whatever nature which shall be in said Trust created by this Agreement.

SECTION

6. Employer Contributions—The term “Employer Contributions” as used herein shall mean payments made by Employers to the Trust Fund herein created.

ARTICLE

II. CREATION OF TRUST FUND AND BOARD OF TRUSTEES.

SECTION

1. Designation—The Union and the Employer hereby create and establish, with the Trustees herein provided for, a Trust to be known as the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND which shall be comprised of assets derived from Employer contributions made pursuant to the collective bargaining agreement between the parties (plus any additional sum or sums, from Employer contributions which may hereafter be agreed upon by the Employers and the Union set forth in written collective bargaining agreements), together with all insurance and annuity contracts (including dividends, refunds, or other sums payable to the Trustees on account of such insurance and annuity contracts) and all investments made and held by the Trustees on account of such insurance and annuity contracts, all investments made and held by the Trustees, all moneys received by the Trustees as contributions or as income from investments made and held by the Trustees or otherwise, and any other property received and held by the Trustees for the uses, purposes, and trusts set forth in this Agreement and Declaration of Trust, where any of the foregoing is derived from the Employer contributions.

SECTION

2. Board of Trustees—There is hereby created a Board of Trustees consisting of four (4) persons representative of the Employers and four (4) persons representative of the Employees. The Employer Trustees shall be designated as follows: one (1) Trustee shall be jointly designated by Southwest Operators Association and Southeastern Area Motor Carriers Labor Relations Association; one (1) Trustee shall be designated by Cartage Employers Management Association; and two (2) Trustees shall be designated by Motor Carriers Employers Conference—Central States. The Employee Trustees shall be designated jointly by the Union, as defined in Article I, Section 2 of this Agreement.

SECTION

3. Term of Trustees—Each Trustees shall serve as such Trustee until he shall die, become incapable of acting hereunder, resign, become unqualified for the position under applicable law, or be removed as herein provided.

SECTION

4. Manner of Acting in Event of Deadlock—In the event a deadlock develops between the Employer and Employee Trustees, or between the Trustees, the Trustees shall appoint a neutral party empowered to break such deadlock within a reasonable length of time. Such neutral party may be appointed in advance of any such deadlock. In the event the Trustees are unable to agree upon a neutral party, or in the event such neutral party is unable to act, either the Employer or the Employee Trustees may petition the District Court of

the United States for the Northern District of Illinois, Eastern Division, for appointment of a neutral person, as provided in Section 302(c) of the Labor Management Relations Act of 1947, as amended.

SECTION

5. Vacancy in Board of Trustees—In case of vacancies by death, legal incapacity, resignation or otherwise of the Employer Trustees or Employee Trustees, a successor thereto shall be appointed as provided in Article II, Section 2, hereof. In the absence of action by the particular party within thirty (30) days following vacancy, and assuming that there are *two* Trustees who are representative of the Employer group, such Trustees may appoint a *third* Trustee to fill the vacancy. A similar right shall be accorded to the Trustees representing the Union. Any Trustee or Trustees shall have the right to resign on written notice to the remaining Trustees, and to the Executive Director; said notice shall specify the effective date of such resignation, which shall be no later than fifteen (15) days after said notice is received by the Executive Director, except that said resignation shall in any event become effective no later than appointment of, and acceptance of appointment by, a Successor Trustee, in accordance with Article II, Section 7 of this Agreement.

SECTION

6. Removal of Trustees—Any Employer Trustee may be removed, with or without cause, at any time by the Employer Association or Group appointing such Employer Trustee; in the event of such removal of such Employer Trustee, the Employer

Association or Group removing such Trustees shall appoint a Successor Trustee. Any Employee Trustee may be removed, with or without cause, at any time by the Union. The Trustees shall also have the authority and duty to act to remove a Trustee holding office in violation of law.

SECTION

7. Designation of Successor Trustee—In the event of a vacancy under either Section 5 or 6 above, the Successor Trustee shall be designated in writing by the appointing authority, and such Successor Trustee shall accept such appointment in writing in a form satisfactory to the Trustees. Both the designation and acceptance shall be filed with the Executive Director of the Fund.

SECTION

8. Limitation of Liability of Trustees—No Trustee shall be liable or responsible for any acts or defaults of any co-Trustee, any other fiduciary, any party-in-interest or any other person except in accordance with applicable law.

SECTION

9. Office of the Fund—The sole and principal office of the Fund shall be in Chicago, Illinois, for the transaction of business of the Fund, the exact location of which is to be made known to the parties interested in such Fund. As such office, and at such other places as may be required by law, there shall be maintained all, or any of, the books and records pertaining to the Fund and its administration.

SECTION

10. No one is Agent Without Written Authority—No individual or person may act as agent for the

Fund unless specifically authorized in writing by the Trustees. No Employer or Union nor any representative of any Employer or Union, in such capacity, is authorized to interpret the Health and Welfare Plan, nor can any such person act as agent of the Trustees. Only the Board of Trustees is authorized to interpret the Health and Welfare Plan within the scope of its authority.

ARTICLE

III. CONTRIBUTIONS AND COLLECTIONS

SECTION

1. Amount of Contributions—Each Employer shall make continuing and prompt payments to the Trust Fund as required by the applicable collective bargaining agreement between the parties. The obligation to make such contributions shall continue during periods when the collective bargaining agreement is being negotiated, but such contributions shall not be required in case of strike after contract termination unless the parties mutually agree otherwise.

SECTION

2. Time of Payment—The Trustees shall, by regulation, fix the time of payment for contributions and shall send a copy of such regulations to each Employer required to contribute.

SECTION

3. Receipt of Payment and Other Property of Trust —The Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made by the Employers to the Trust Fund, and the Trustees are hereby vested with all right,

title and interest in and to such moneys and all interest accrued thereon, and are authorized to receive and be paid the same. The Trustees agree to receive all such payments, deposits, moneys, insurance and other assets and properties referred in Article II and this Article, and to hold same in Trust hereunder for the uses and purposes of the Trust herein created.

SECTION

4. Collection and Enforcement of Payment—The Trustees, or such committee of the Trustees as the Board of Trustees shall appoint, or the Executive Director when directed by such committee or by the Trustees, shall have the power to demand and collect the contributions of the Employers to the Fund. Said Board of Trustees shall take such steps, including the institution and prosecution of, and intervention in, any legal proceedings as the Trustees in their discretion deem in the best interest of the Fund, to effectuate the collection or preservation of contributions or other amounts which may be owed to the Trust Fund without prejudice, however, to the rights of the Union to take whatever steps which may be deemed necessary for such purpose. The Trustees are authorized to receive all Employer contributions and apply such contributions in the best interest of the Fund. Nothing herein shall give any Employer the right to designate how any contributions shall be applied.

SECTION

5. Production of Records—Each employer shall promptly furnish to the Trustees, upon reasonable demand, the names and current addresses of its Employees, their Social Security numbers, the hours worked by each Employee and such other

information as the Trustees may reasonably require in connection with the administration of the Trust. The Trustees may, by their representatives, examine the pertinent records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. All Employers shall annually furnish to the Trustees, if requested by them, a statement showing whether:

- (a) the organization is a corporation and the names of all of its officers;
- (b) if not a corporation, a certificate stating that it is either a partnership or an individual proprietorship and the names of the partners or the name of the individual proprietor.

The Union will comply with any reasonable request of the Trustees to examine those records of the Union which may indicate the employment record of any Employee whose status is in dispute. The names and addresses of participants and beneficiaries are confidential information not to be disclosed by the Trustees except as required by an order of a court of competent jurisdiction, except where necessary for determination of benefits in accordance with the provisions of this Trust Agreement, or as required by law.

ARTICLE

IV. POWERS AND DUTIES OF TRUSTEES

SECTION

1. The Trustees shall have authority to control and manage the operation and administration of the Trust in accordance with applicable law.

SECTION

2. The Trustees shall hold, manage, care for, and protect the Trust Fund and collect the income therefrom and contributions thereto.

SECTION

3. (a) The Trustees shall procure, from such solvent insurance company or companies as it may designate, a group health, accident and life policy or policies including, in its discretion, dependent coverages; Trustees may also purchase, lease, manage, or contract for any other programs or facilities which are to be used or devoted to the general health and welfare of the Employees and their families, including, without limitation, participation in, or adoption of, privately or governmentally sponsored health programs and also including self-insurance. The amounts of such policy or policies, or purchases or programs shall be within the discretion of the Trustees. The Trustees shall have the power, in their sole discretion, to invest and reinvest any excess principal and income of the Trust Fund over the requirements for insurance premiums, contracts, expenses and other disbursements, in such securities, common and preferred stock, mortgages, notes, retail estate or other property as shall be permissible investments for Trustees in accordance with applicable law, and may sell or otherwise dispose of such securities or property at any time and from time to time as they see fit. The Trustees shall also have power (in addition to and in limitation of common law and statutory authority) to invest in any stocks, bonds, or other property, real or personal, including improved or unimproved real estate and equity interests in

real estate and also including open-ended diversified investment companies of the type commonly known as mutual funds, where such an investment appears to the Trustees in their discretion and in accordance with their fiduciary obligations to be in the best interest of the Fund and its participants and beneficiaries, judged by then present day business conditions and standards, and to exercise in respect to any stocks, bonds, or other property, real or personal, held by them as Trustees, all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds, or other property in his own right.

- (b) The Trustees are further authorized, in their discretion, to cancel any policy in force and to substitute other or additional policies if, in their discretion, such course is desirable, provided, however, that any such change prior to the anniversary date of the then existing policy or policies or of the insurance carrier may be made only by unanimous action of the Board of Trustees. Changes of insurance carriers or the extent of insurance coverage on the anniversary date of an existing policy may be made by a majority vote of the Trustees.
- (c) The Trustees, if they so desire, are authorized to allocate only to a committee of Trustees or to one or more "Investment Managers" as defined in Section 3 (38) of the "Employee Retirement Income Security Act of 1974", appointed by the Trustees such duties and responsibilities with respect to the Trust assets, including the responsibility to invest or reinvest such assets, as they shall specify in such

allocation or appointment. In connection with any such appointment, the Trustees shall from time to time adopt appropriate investment policies and also may delegate to such Investment Manager the right to custody and possession of the Trust assets, or any part thereof. Any such appointment may be revoked at any time by notice in writing from the Trustees to such investment Manager.

SECTION

4. All Trust Funds not invested shall be deposited by the Trustees in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits, or disbursements therefrom, shall be made in the name of the Trust in the manner designated by the Trustees and upon the signature(s) designated by the Trustees.

SECTION

5. The Trustees shall keep true and accurate books of account and a record of all their transactions.

SECTION

6. The Trustees shall engage one or more independent qualified public accountants and enrolled actuaries to perform all services required by and in accordance with applicable law and such other services as the Trustees deem necessary.

SECTION

7. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram, or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

SECTION

8. Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

SECTION

9. The Trustees are hereby authorized to formulate and promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust, provided the same are not inconsistent with the terms of the Agreement, and the Articles in the Central States, Southeast and Southwest Areas Agreements creating the Health and Welfare Fund. All rules and regulations adopted by action of the Trustees for the administration of the Trust Fund shall be binding upon all parties hereto, all parties dealing with the Trust, and all persons claiming any benefits hereunder.

SECTION

10. Any Successor Trustee appointed in accordance with the provisions of this Agreement, upon accepting in writing the terms of this Trust, in a form satisfactory to the Trustees, shall be vested with all of the rights, powers and duties of his predecessor.

SECTION

11. (a) The Trustees may assign, from time to time, various administrative matters to such committees and subcommittees of Trustees, experts, or other individuals or organizations as

they may deem appropriate or necessary in their sole discretion. The Trustees may also assign and delegate, from time to time, specified Trustee responsibilities to committees and subcommittees of Trustees, including review of and recommendation to the Board of Trustees concerning proposals related to loans and other investments by the Fund, including review of and authorized final action (subject to review pursuant to established procedures) upon claims for health and welfare and other benefits administered by the Fund, and including such other responsibilities as the Trustees determine. Committees and subcommittees of Trustees shall consist of an equal number of Employer and Employee Trustees. Only the Trustees shall have the authority to approve, modify the terms of, or terminate any loan. The Trustees, from time to time as appropriate, shall determine and modify the loan and investment policies of the Fund, including the diversification of investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

- (b) The Trustees may establish a Public Advisory Board consisting of four (4) persons, two (2) to be designated by a majority of the Employer Trustees and two (2) to be designated by a majority of the Employee Trustees. Such Public Advisory Board, if established, shall act solely in an advisory and consultant capacity and shall not have or exercise any fiduciary powers, responsibilities or duties. None of the members of said Board, individually or collectively, shall have or exercise any discretionary authority or discretionary control respecting management of the

Fund, or have or exercise any authority or control respecting management or disposition of any assets of the Fund, or render any investment advice for any fee or other consideration, or have or exercise any discretionary authority or discretionary responsibility in the administration of the Fund. The Trustees shall establish procedures for submission of matters to the Public Advisory Board, if established, for advice and consultation by said Board. Any payment of compensation and expenses for members of said Board shall be determined by the Trustees.

- (c) The Trustees shall appoint an Executive Director, who shall, subject to the directions of the Trustees with respect thereto, be responsible to the Trustees and/or any committee thereof for coordinating the administration of the Fund's assets, office and personnel, for the coordination and administration of accounting and actuarial services, for the preparation of all reports and other documents required to be filed or issued in accordance with law, for the performance of ministerial duties in conformance therewith, and for such other duties which shall be assigned to him by the Trustees. The Executive Director shall be the custodian of the documents and other records of the Fund.

SECTION

- 12. No party dealing with the Trustees shall be obligated:

- (a) to see the application to the trust purposes, herein stated, of any money or property belonging to the Trust Fund, or

- (b) to see that the terms of this Agreement have been complied with, or
- (c) to inquire into the necessity or expediency of any act of the Trustees.

Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon:

- (1) that at the time of the delivery of said instrument the Trust was in full force and effect,
- (2) that the instrument was executed in accordance with the terms and conditions of this Agreement, and
- (3) that the Trustees were duly authorized and empowered to execute the instrument.

SECTION

- 13. The Trustees shall, by regulation, establish rules relating to payments of contributions by Employers for Employees during periods of such Employees' illness or disability and related matters, but not contrary to applicable collective bargaining agreements.

SECTION

- 14. The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law:
 - (a) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be bind-

ing and conclusive on the parties hereto and on the Employees involved.

- (b) To keep property and securities registered in the names of the Trustees or in the name of any other individual or entity duly designated by the Trustees.
- (c) To establish and accumulate as part of the Trust Fund a reserve or reserves, adequate in the opinion of the Trustees, and in accordance with applicable law, to carry out the purposes of such Trust.
- (d) To pay out of the funds of the Trust all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof.
- (e) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.
- (f) To sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith.

SECTION

15. The Trustees shall be entitled to receive reasonable compensation for services rendered, and the reimbursement of expenses properly and actually incurred, in the performance of their duties to the Fund; except that no Trustee who already receives

full-time pay from an Employer or an association of Employers or from the Union shall receive compensation from the Fund, except for reimbursement of expenses properly and actually incurred.

SECTION

16. The Trustees shall use and apply the Trust Fund for the following purposes:

(a) To pay or provide for—

(1) the payment of all reasonable and necessary expenses of collecting the contributions and administering the affairs of this Trust, including the employment of such administrative, legal, actuarial, expert, and clerical assistance as may be reasonably necessary.

(2) the purchasing, owning or leasing of such premises as may be necessary for the operation of the affairs of the Trust, and

(3) the purchase or leasing of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate to the performance of their duties.

(b) To pay or provide for the payment of health and welfare and related benefits to eligible Employees in accordance with the terms, provisions and conditions of the Health and Welfare Plan to be formulated and agreed upon hereunder by the Trustees.

SECTION

17. The Trustees, by majority action, shall have the power to construe the provisions of this Agreement

and the terms and regulations of the Health and Welfare Plan: and any construction adopted by the Trustees in good faith shall be binding upon the Union, Employees and Employers.

SECTION

18. The Trustees, by resolution, shall provide for fidelity bonds, in such amounts as they may determine, for their employees and for the Trustees, the cost of which shall be paid by the Fund. The Trustees may purchase insurance coverage to protect the Fund from liability arising out of any error or omission of any Trustee or employee of the Trust, in accordance with applicable law, the cost of which policy shall be paid by the Fund.

SECTION

19. The Trustees shall provide participants and beneficiaries such information as is required by law.

ARTICLE

V. CONTROVERSIES AND DISPUTES

SECTION

- 1. In any controversy, claim, demand, suit at law, or other proceeding between any participant, beneficiary, or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record, and any other evidence pertinent to the issue involved.

SECTION

2. All questions or controversies, of whatsoever character, arising in any manner or between any par-

ties or persons in connection with the Fund or the operation thereof, whether as to any claim for any benefits preferred by any participant, beneficiary, or any other person, or whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees or this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees, or to a committee of Trustees, and the decision of the Trustees or of such committee thereof shall be binding upon all persons dealing with the Fund or claiming any benefit thereunder.

SECTION

3. The Trustees may in their sole discretion, compromise or settle any claim or controversy in such manner as they think best, and any decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust.

ARTICLE

VI. OPERATION OF BOARD OF TRUSTEES

SECTION

1. Officers—The Board of Trustees shall at each meeting designate a presiding Chairman. The Chairmanship shall be rotated between the Employee Trustees and the Employer Trustees.

SECTION

2. Quorum—A Quorum of the Trustees for the transaction of business, except as otherwise specifically

provided herein, shall consist of at least four (4) Trustees, two (2) of whom shall be representative of the Employers and two (2) of whom shall be representative of the Employees. A quorum of a committee shall consist of a majority of the members thereof. Upon each matter voted upon at any meeting of the Trustees, the Employer Trustees and the Employee Trustees shall each have the same number of votes based upon the larger number of Employee or Employer Trustees in attendance, as the case may be; provided, however, that the vote or votes cast by each such Trustee shall be cast as an individual Trustee and not as a part of a block. All actions of the Trustees at meetings shall be by majority vote of those present and voting, a quorum being present. No Trustee may vote by proxy.

SECTION

3. Records of Trustee Action—The Trustees shall make and maintain a record of the actions of the Trustees taken at any meeting thereof. Any action, which may be taken at a meeting of the Trustees if a consent in writing, setting forth the action so taken, should be distributed to all of the Trustees and should be signed by five (5) of the Trustees, said written consent evidencing the substance of the action of the Trustees so taken.

SECTION

4. Reports—All reports required by law to be signed by one or more Trustees shall be signed by all of the Trustees, provided that all of the Trustees may appoint in writing one or more of their number to sign such report on behalf of the Trustees.

SECTION

5. Power to Act in Case of Vacancy—No vacancy or vacancies in the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Agreement, to administer the affairs of the Trust notwithstanding the existence of such vacancy or vacancies.

SECTION

6. Expenses—All proper and necessary expenses incurred by any former or incumbent Trustee, including costs of defense in litigation arising out of the Trusteeship of this Fund, and also including costs incurred by any former or incumbent Trustee in providing testimony or information about administration of this Fund in any investigation, trial or other proceeding, shall be paid out of the Trust Fund, as a matter of right of any such former or incumbent Trustee, to the extent permitted by applicable law. As used in the preceding sentence, the term "costs" includes, but is not limited to, reasonable attorneys' fees.

SECTION

7. Meetings—Regular meetings of the Trustees shall be held on the Tuesday immediately before the third Wednesday of each month, and on such other days as the Trustees determine, except that such regular monthly meeting date may be changed or postponed either by the Board of Trustees in regular meeting assembled or otherwise by written decision signed by a majority of the Trustees. Any two (2) Trustees may request a meeting of the Trustees at any time by notifying the Executive Director who shall arrange the time and place thereof. Written notices of meetings may be delivered in person, by mail, or by telegram. Meetings of the Trustees may also be held at any time without notice if all the Trustees consent thereto.

ARTICLE

VII. INCLUSION OF OTHER EMPLOYERS UNDER PLAN

SECTION

1. Extension of Trust—The Trustees are authorized to extend the coverage of this Agreement and Trust to such other Employers and Employees as such Trustees shall agree upon, provided such parties are required to conform to the terms and conditions of the Trust and to make the same rate of payments required of the Employers herein for the same benefits.

SECTION

2. Reciprocity Agreements—The Trustees shall be authorized to enter into reciprocity agreements with other labor organizations and other welfare funds in which such labor organizations participate.

SECTION

3. Merger—The Trustees shall have the power to merge with any other fund established for similar purposes as this Fund, under terms and conditions mutually agreeable to the respective Boards of Trustees.

ARTICLE

VIII. BENEFICIAL RIGHTS

SECTION

1. No Right, Title, or Interest of Employers and Union —No Employer or Union, or Employees, shall have the right, title or interest in or to the Trust

Fund or any part thereof. There shall be no pro-rata or other distribution of any of the assets of the Fund as a result of any Union, Employer or Group of Employees or Employers ceasing their participation in this Fund for any purpose or reason, except as required by law.

SECTION

2. Limitations upon Beneficial Rights of Employees—
No Employee, participant or any beneficiary of a participant shall have any right, title or interest in or to the Trust Fund or any part thereof, provided, however, that any participant who shall be covered by an insurance plan, or his beneficiaries under such plan, shall be entitled to the benefits in the forms and amounts and subject to the terms and conditions of such insurance plan and of this Trust; provided further, however, that the benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor to seizure or to sale under any legal, equitable or any other process, and in the event that any claim or benefit shall, because of any debt incurred by or resulting from any other claim or liability against any participant or beneficiary, by reason of any sale, assignment, transfer, encumbrance, anticipation or other disposition made or attempted by said participant or beneficiary, or by reason of any seizure or sale or attempted sale under any legal, equitable or other process, or in any suit or proceeding become payable, or be liable to become payable to any person other than the participant or beneficiary for whom the same is intended, as provided herein, pursuant hereto, the Trustees shall have power to withhold payment of such benefit to such participant or beneficiary until such assignment, transfer, encumbrance, anticipa-

tion or other disposition, writ or legal process is cancelled or withdrawn in such manner as shall be satisfactory to the Trustees. Until so cancelled or withdrawn, the Trustees shall have the right to use and apply the benefits in a manner which to the Trustee may seem best, directly for the support and maintenance of such participant or beneficiary.

SECTION

3. Optional Benefits Prohibited—No Employee shall have the right, privilege or option to receive, instead of the benefits provided hereunder:
 - (a) Any part of the contributions payable by Employers under this Agreement;
 - (b) A cash consideration either upon termination of the plan or his withdrawal from it either voluntarily or through severance of employment with the particular Employer;
 - (c) The cash surrender value of any policy of insurance in lieu of the benefits provided in said policy.

ARTICLE

IX. TERMINATION OF PLAN

SECTION

1. This Trust shall cease and terminate upon the happening of any one or more of the following events:
 - (a) In the event the Trust Fund shall be, in the opinion of the Trustees, inadequate to carry out the intent and purpose of this Agreement, or to meet the payments due or to be-

come due under this Agreement to persons already drawing benefits.

- (b) In the event there are no individuals living who can qualify as Employees hereunder.

SECTION

- 2. Distribution on Termination—In the event this Trust is terminated, the Trustees are authorized and empowered to dispose of the funds remaining in their hands in accordance with any Plan conforming to the purposes of the Employee Retirement Income Security Act of 1974 and the objective of this Agreement.

ARTICLE

X. AMENDMENT OF AGREEMENT

SECTION

- 1. It is anticipated that in the administration of this Trust conditions may arise that are not foreseen at any time of the execution of this Agreement, and it is the intention of the parties that the power of amendment, which is hereinafter given, be exercised in order to carry out the provisions of this Trust, among which is to pay the largest benefits possible, which are consistent with the number of members becoming and likely to become eligible for such payments, the amounts of funds which are available and which will probably become available, and the following of sound actuarial practice. Therefore, the power is given to the Trustees to amend this Agreement by majority vote, at any time and from time to time, and all parties to the Trust, and all persons claiming an interest thereunder shall be bound thereby, and no participant, Employee member, beneficiary, or any other person shall have any vested inter-

est or right in the Trust Fund or in any payment from the Trust Fund, except as provided by law. The Trustees have full authority to amend, repeal, add to, or take away any right of payment, retroactively or otherwise, that they deem proper for the preservation of this Trust; providing, however, in no event shall the Trust Fund be used for any purpose other than the purpose set forth in this Trust Agreement, and for the purposes of paying the necessary expenses incurred in the administration of this Trust. All amendments to this Agreement shall comply with applicable sections of the then applicable Internal Revenue Code, applicable federal statutes, and the Contract Articles creating the Health and Welfare Fund.

SECTION

2. Limitations upon Amendments—No amendment to this Trust Agreement shall permit the return to, or payment of the Fund or any part thereof, to any Employer, except the return of an overpayment of a contribution by mistake of fact, but only if the contribution is returned within one year after the payment of such contribution; or permit the administration of this Trust by a Board of Trustees other than one composed of an equal number of Employer Trustees and of Employee Trustees to administer the Trust; or permit the diversion of the Trust Fund or any part thereof from the purposes of the Trust.

ARTICLE

XI. MISCELLANEOUS

SECTION

1. In no event shall the Employers, directly or indirectly, receive any refund on contributions made

by them to the Trust, except a refund of contributions made by a mistake of fact determined by the Trustees if application therefor is received within thirty (30) days after payment of the contributions. In no event shall the Employers, directly or indirectly, participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund.

SECTION

2. The Union or the Employer may, at any time, demand of the Trustees an accounting with respect to any and all accounts upon agreement to pay necessary expenses thereof. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and judicial determination of any questions in connection with their duties and obligations under this Trust, or in connection with the administration or distribution thereof. Any Trustee who has resigned, been removed from office, or not been reappointed shall execute all instruments necessary to transfer the Trust Fund.

SECTION

3. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until an adjudication of such question or dispute, satisfactory to the Trustees, in their sole discretion, shall have been made, or the Trustees shall have been adequately indemnified against loss to their satisfaction.

SECTION

4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his ob-

ligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer shall be obligated to pay interest in the moneys due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including, but not limited to, attorneys' fees and such fees for late payment as the Trustees determine and as permitted by law. The interest payable by an Employer, in accordance with the preceding sentence, shall be computed and charged to the Employer at the prime interest rate established by Chase Manhattan Bank (New York, New York) for the fifteenth (15th) day of the month for which the interest is charged. Any judgment against an Employer entered on and after September 26, 1980, for contributions owed to this Fund shall include by mandate of the court the greater of (a) a doubling of the interest and charged in accordance with this section or (b) liquidated damages based on the unpaid contributions only (exclusive of interest) as determined by the court in the amount of 20% in accordance with the Multiemployer Pension Plan Amendments Act of 1980, the Employee Retirement Income Security Act, 29 U.S.C. 1132 (g) (2) (C) (i) and (ii).

SECTION

5. Where used in this Agreement, words in the masculine shall be read and construed as in the feminine, and words in the singular shall be read and construed as though used in the plural, in all cases where such construction would so apply.

SECTION

6. The Article titles are included solely for convenience and shall, in no event, be construed to affect

or modify any part of the provisions of this Agreement or be construed as part thereof.

SECTION

7. This Agreement shall in all respects be construed according to and governed by the laws of the State of Illinois, including but not limited to the laws applicable to the rate of interest in the State of Illinois, except as such laws may be preempted by the laws and regulations of the United States.

ARTICLE

XII. SAVINGS CLAUSE

Should any provision of this Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of the Health and Welfare Plan. No Trustee shall be held liable for any act done or performed in pursuance of any provision hereof prior to the time such act or provision shall be held unlawful by a court of competent jurisdiction.

APPENDIX C

CENTRAL STATES
SOUTHEAST AND
SOUTHWEST AREAS
HEALTH AND WELFARE AND PENSION
FUNDS

PARTICIPATION AGREEMENT

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS
PENSION FUND/HEALTH AND WELFARE FUND
9377 WEST HIGGINS ROAD
ROSEMONT, IL 60018-4938
PHONE: 2 (708) 518-9800

THIS AGREEMENT made and entered into on the
—— day of —— by and between the Employer and
the Union signatory hereto by their duly authorized rep-
resentatives.

WITNESSETH:

WHEREAS, the Union and the Employer have entered
into a collective bargaining agreement which provides for
participation in the CENTRAL STATES, SOUTHEAST
AND SOUTHWEST AREAS PENSION AND/OR
HEALTH AND WELFARE FUND in order to obtain
retirement and/or health benefits for Employees (classifi-
cation: —————) represented by the Union and em-
ployed by the Employer.

NOW, THEREFORE, for and in consideration of the
promises and mutual covenants herein contained and sub-
ject to the written acceptance of the parties as partici-
pants by said Trust Fund(s), the Union and the Em-
ployer hereby agree as follows:

1. The Union and the Employer agree to be bound
by, and hereby assent to, all of the terms of the

Trust Agreement(s) creating said CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION AND/OR HEALTH AND WELFARE FUND, as amended, all of the rules and regulations heretofore adopted by the Trustees of said Trust Fund(s) pursuant to said Trust Agreement(s), and all of the actions of the Trustees in administering such Trust Fund(s) in accordance with the Trust Agreement(s) and rules adopted.

2. The Employer hereby accepts as Employer Trustees the present Employer Trustees appointed under said Trust Agreement(s) and all such past or succeeding Employer Trustees as shall have been or will be appointed in accordance with the terms of the Trust Agreement(s).
3. The Union hereby accepts as Union Trustees the present Union Trustees appointed under said Trust Agreement(s) and all such past or succeeding Union Trustees as shall have been or will be appointed in accordance with the terms of the Trust Agreement(s).
- 4(a). In accordance with the collective bargaining agreement, the effective date of participation in the Pension Fund is _____.
- 4(b). In accordance with the collective bargaining agreement, the effective date of participation in the Health and Welfare Fund is _____.
- 5(a). The Employer shall contribute to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND the following amounts per week/day for its bargaining unit Employees pursuant to the terms of the collective bargaining agreement, and only for such Employees:

Effective Date: _____ Amount: \$ _____

Effective Date: _____ Amount: \$ _____

Effective Date: _____ Amount: \$ _____

- 5(b). The Employer shall contribute to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND the following amounts per week for its bargaining unit Employees pursuant to the terms of the collective bargaining agreement, and only for such Employees:

Effective Date: _____ Amount: \$ _____

Effective Date: _____ Amount: \$ _____

Effective Date: _____ Amount: \$ _____

- 5(c). If the Employer signs and enters into a new collective bargaining agreement with the Union, or modifies such current collective bargaining agreement, the Employer must notify the Trust Fund(s) of such contractual change, and further agrees that no applicable Statute of Limitations shall begin to run until such notice of contract change has been received by the Fund(s).

6. The Employer and Union represent to the Trustees that payments will be made only on behalf of Employees in the collective bargaining unit, excluding, by way of example but not limitation, self-employed persons and supervisors, among others.

7. This Agreement shall continue in full force and effect until such time as the Employer notifies the Fund(s) by certified mail (with a copy to the Local Union) that the Employer is no longer under a legal duty to make contributions to the Fund(s). The Employer shall set forth in the required written notice to the Fund(s) the specific basis upon which the Employer is relying

in terminating its obligation to make contributions to the Fund(s). The Employer expressly agrees and hereby acknowledges by the signing of this Agreement that its obligation to make contributions to the Fund(s) shall continue until the above-mentioned written notice is received by the Fund(s) and the Trustees acknowledge the Employer's termination in writing.

8. Payments of Employer contributions are to be mailed to Central States Health and Welfare and Pension Funds, Post Office Box 71147, Chicago, Illinois 60694, or to such other depository as the Trustees may designate.
9. On or before the fifteenth (15th) day of the month after the prepared date of a bill, the Employer must report to the Fund(s) any changes in the status of Employees that are applicable to the period billed. Failure of an Employer to file a written report, on a form provided by the Fund(s) within said period constitutes automatic acceptance of and liability for the amounts due on the Employees listed. After said period has expired, an Employer will not be able to receive credit for any changes of employee status, regardless of actual terminations, leaves of absence, sick leave, layoffs or other changes. No Statute of Limitations made applicable as a result of any change in Employee status shall begin to run until said report of such change has been delivered to the Fund(s).
10. In the event of a delinquency on the part of the Employer, interest will be charged at a rate in accordance with the Trust Agreement(s) per annum on the outstanding balance. Any subsequent payments on delinquencies will be applied

in accordance with the policy established by the Trustees.

11. If an Employer signs a collective bargaining agreement through an Employer Association establishing participation in the Pension and/or Health and Welfare Fund, the respective Association's signature shall be binding on the respective Employers of the Association.
12. This Agreement and any interpretation thereof will be governed according to the law of the State of Illinois.
13. For purposes of this Agreement, the following definitions will govern:
 - (1) "Employer", as used herein, shall mean any Employer who is bound by a collective bargaining agreement with the Union and agrees to be bound by the Trust Agreement (Pension and/or Health and Welfare Fund), or any Employer not presently a party to such collective bargaining agreement who satisfies the requirements for participation as established by the Trustees and agrees to be bound by the Trust Agreement (Pension and/or Health and Welfare Fund).
 - (2) "Employee", as used herein, shall mean:
 - (a) A person (other than a person employed in a supervisory capacity) who has been on the payroll of an Employer for at least thirty (30) days who is employed under the terms and conditions of a collective bargaining agreement as entered into between an Employer and a Union, and on whose behalf contributions are required to be

made to the Pension and/or Health and Welfare Fund by the Employer; or

- (b) All persons employed by the Union, as herein defined, upon being proposed by the Union and after acceptance by the Trustees as hereinafter defined; and as to such Union personnel the Union shall be considered an Employer, solely for the purpose of contributions, and shall, on behalf of such employees, make or be presently required to make contributions to the Pension and/or Health and Welfare Fund at the times and at the rate of payment equal to that required by any other Employer who participates in the Trust Fund for the same benefits; or
- (c) All persons employed by CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, or CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND upon acceptance by the Trustees as hereinafter defined; and as to such personnel the Trustees shall be deemed an Employer, solely for the purpose of contributions, within the meaning of the Agreement(s) and Declaration(s) of Trust and shall, on behalf of such personnel, make or be presently required to make contributions to the Trust(s) at the times and at the rate of payment equal to that required by any other Employer who participates in the Trust Fund(s) for the same benefits.

- (d) In all instances the common law test, or the applicable statutory definition of master-servant relationship shall control the Employee status.
 - (e) The continuation of Employee status once established shall be subject to such reasonable rules as the Trustees may adopt according to law.
- (3) Hours worked, for purposes of this Agreement, shall mean time of employment for which an Employee is entitled to wages and includes, but is not limited to, show up time, overtime and vacation time. Hours worked shall also include payment of wages which is the result of any National Labor Relations Board action, grievance procedure, or proceeding which resulted in the payment of back wages to an Employee by the Employer. Additionally, the hours worked shall also include any period for which the Fund(s) is (are) obligated under the Employee Retirement Income Security Act of 1974 to award credited service to an Employee.
- (4) Delinquent Employer, for purposes of this Agreement, shall mean an Employer whose contribution payment is not received on the fifteenth day of the month after the prepared date of a bill.
14. It is expressly agreed to by the Employer (its successors, administrators, executors and assigns) who is or may become a party to the collective bargaining agreement (including all renewals and extensions thereof) referred to in the second paragraph of this Participation Agreement that any and all disputes arising

between the Employer and the Fund(s) concerning the application and/or interpretation of the collective bargaining agreement's provision for contributions to said Trust Fund(s); this Participation Agreement; or the Fund(s) Trust Agreement as it relates to the Employer's obligations to submit contributions to the Fund(s) shall be submitted for resolution to the Trustees of the Fund(s) and need not be subject to the grievance-arbitration clause, or any other adjudicatory clause or clauses of the collective bargaining agreement. It is understood that in the event there remain any unresolved disputes between the parties to this Agreement after exhausting the procedure set forth in this paragraph, either party is free to seek appropriate judicial relief.

15. This Agreement is not binding upon the Fund(s) until accepted by the Trustees and confirmation of same is sent out over the signature of an authorized Fund(s) representative, normally the Executive Director.

IN WITNESS WHEREOF said Employer and Union have caused this instrument to be executed by their duly authorized representatives, the day and year first above written.

EMPLOYER

COMPLETE ADDRESS OF EMPLOYER

FEDERAL EMPLOYER NUMBER

BY

UNION

BY

78a

If Employer is signed to Group/National Contract, give name of such Contract: _____

Is the Employer represented by a bargaining association, yes/no. If Yes, name: _____

